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History of Public Land Law Development



Written for the Public Land Law Review Commission

by

Paul W. Gates

with a chapter by

Robert W. Swenson

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Washington, D.C. November 1968

PUBLIC LAND LAW REVIEW COMMISSION

Background

The public lands of America date back to the time of the Union's formation. Then, and soon thereafter, seven of the original States ceded to the Central Government some 233.4 million acres of land lying westward to the Mississippi River. Thereafter, through purchase and treaty, the United States acquired an additional billion acres of public domain, the last acquisition being the purchase of Alaska from Russia in 1867. Altogether, nearly 2 billion acres of land in 32 States have been part of the public domain at one time or another.

At first, these lands were sold for their revenue. Eventually, however, as the pioneers swept westward, the revenue-raising policy was replaced by one stressing settlement and development of the land. The Homestead Act of 1862 was the first of a series of settlement and development laws enacted over a period of some 60 years—the desert land law, mining laws, and the various homestead laws—all designed to meet a particular need of the period. Meanwhile, many millions of acres were transferred to private ownership through military, railroad, and other land grants, including various grants to the States.

Through these means, nearly 1.2 billion acres have passed from Federal ownership, leaving approximately 715 million acres of the original public domain lands in Federal ownership. Of these 715 million acres, 364 million are in the State of Alaska. Add to this the 52 million acres acquired for various purposes, and federally owned lands today amount to approximately 770 million acres—about one-third of the Nation's total land area. Some of these lands are in national forests and some are reserved for national parks, wildlife refuges, and other specific uses; but more than half constitute the "vacant and unappropriated" public domain lands which have never left Federal ownership and have not been dedicated to a specific use pursuant to legislative authorization.

The Act establishing the Public Land Law Review Commission contains in section 10 the following definition:

> As used in this Act, the term 'public lands' includes (a) the public domain of the United States, (b) reservations, other than Indian reservations, created from the public domain, (c) lands permanently or temporarily withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws, including the mining laws, (d) outstanding interests of the United States in lands patented, conveyed in fee or otherwise, under the public land laws, (e) national forests, (f) wildlife refuges and ranges, and (g) the surface and subsurface resources of all such lands, including the disposition or restriction on disposition of the mineral resources in lands defined by appropriate statute, treaty, or judicial determination as being under the control of the United States in the Outer Continental Shelf.

Working with the Commission are a 33-member Advisory Council and the representatives of the 50 State Governors.[1]

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[1] See p. 807, *et seq.*

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Foreword

This volume, setting forth the history of public land law development, is presented to the interested public as a foundation stone for the entire study program of the Public Land Law Review Commission.

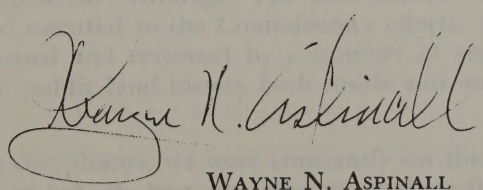
At one time or another, the legal title to approximately three-fourths of the area of our Nation has rested with the Federal Government. Our past attitudes and policies toward public land disposal and management obviously have contributed to the historic strength of the United States as we know it—and to many of the problems this Commission must consider.

While social, economic, and political considerations are necessary to an understanding of public land law and policy, it is essential that those considering future public land policy study and understand the manner in which our present and past public land laws and policies grew as they did. If the American people are to adopt a reasonable program for the solution of foreseeable problems with respect to the retention and management or disposition of the public lands, we must study history, thereby learning how to improve on the attainments of those who came before us, thus profiting from past experience.

Considering the vast changes in American life and attitudes since Thomas Donaldson prepared his reference work, referred to in the Director's letter of October 1, 1968, the time is indeed propitious for a new look at the history of public land law development in the United States. In addition, my own reading of this volume leaves no doubt that the planned objectives for this work have been met.

The members of the Commission probably will not unanimously agree with all of the inferences and observations of the authors. Likewise, I do not expect that all members of the Advisory Council and all of the Governors' Representatives will agree with the viewpoints expressed by the authors. But, I believe that all of us owe a deep debt of gratitude to the authors for providing us with this background material from which our entire review will profit greatly.

It is my desire and hope that this book will be read by all those interested in the public lands of the United States. But, it should be required reading for all members of the Commission, members of the Advisory Council, the Governors' Representatives, and those members of both the executive and legislative branches who will have any responsibility for considering implementation of the Commission's report and recommendations.



WAYNE N. ASPINALL
Chairman

Letter of Transmittal

Public Land Law Review Commission

1730 K Street, N.W.
Washington, D. C. 20006

October 1, 1968

Honorable Wayne N. Aspinall
Chairman, Public Land Law Review Commission, Washington, D.C.

Dear Mr. Chairman:

It is with pleasure that we forward the *History of Public Land Law Development,* prepared for us by Professors Paul Wallace Gates of Cornell University and Robert W. Swenson of the University of Utah under the supervision of our staff.

As agreed upon between us, one of the first projects that the staff embarked upon was the preparation of a history that would serve as background for all those considering future public land policy. Necessarily, we first examined earlier histories. We found that outstanding in the field was one prepared by Thomas Donaldson, titled *The Public Domain,* as part of the work of the Commission that studied public land policy in accordance with the Act of March 3, 1879, 20 Stat. 394. Taking into consideration the eminence of Donaldson's work and the requirements of the Public Land Law Review Commission, we determined at the outset to explicitly make clear that it was not intended to replace or supplement Donaldson as a source book in the field. Rather, we wanted a comprehensive review, not present in Donaldson's work, that would give us insights into the manner in which Federal public land laws and policies had influenced —through failures and successes—the sweep of our Nation's history.

We designed a study to describe the relationship of public land law and policy to the history and growth of our Nation with a major focus on how and why our public land laws and policies developed as they did.

The document we forward today is based—as are all of the manuscripts we are preparing or having prepared—on an outline prepared by the staff in order to assure the desired comprehensive coverage. The staff outline, which established the topical areas deemed essential to the Commission's efforts, was, before being put in final form, discussed and reviewed by a number of recognized scholars in the field of American public land history both inside and outside of the Federal Government.

In our discussions with consultants, we were constantly on the alert for indications as to the person or persons best qualified to prepare this history. With

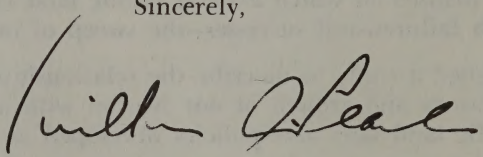
revealing unanimity, his peers recommended and agreed that Professor Gates would be the ideal man for the basic task. By this time we had come to know Professor Gates because he was one of those with whom we had consulted in the early stages of developing a staff outline. We consider ourselves most fortunate in thereafter obtaining his services to prepare the history.

Responding to Professor Gates' preference not to prepare that portion of the history designed to deal with development of mineral law, we sought out the services of one eminently qualified in that specialized field. With great benefit to the project, we were able to contract for the services of Professor Swenson.

For nearly 36 years, Professor Gates has been researching and teaching American history, with specific emphasis on subjects aligned closely to the interests of this Commission. From 1946 to 1956, he served as Chairman of the Department of History at Cornell University, continuing on the staff thereafter. Professor Swenson has likewise spent many years in this field and contributed a highly regarded article on *Source and Evolution of American Mining Law* to the American Law of Mining (1960).

Staff responsibility for this project has been continuously assigned to Elmer F. Bennett, General Counsel and Chief of the Legal Group. During development of the staff outline, he was assisted by Clifford Oulette, whose services, though brief, leave an imprint on our work. Editorial work was accomplished by our Staff Editor, Arthur B. Meyer and the Assistant Staff Editor, Dorothy M. McDonnell. We also are pleased to take this opportunity to express our recognition to the many people who in one way or another contributed to the design and fulfillment of this project. We wish especially to acknowledge the counsel of E. Louise Peffer, Allan Bogue of the University of Wisconsin, Vernon Carstensen of the University of Washington, Jerry A. O'Callaghan of the Department of the Interior, D. Irvin Rasmussen of the Department of Agriculture, Alvin M. Josephy, Jr., Editor, American Heritage Publishing Company, and Stephen Strausberg of Cornell University.

Sincerely,



MILTON A. PEARL
Director

Enclosure

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Representative Ralph J. Rivers of Alaska served on the Commission from August 1966 until January 1967.

(For a listing of the members of the Advisory Council and of the Governors' Representatives see pages 807–812.)

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Preface

On four occasions criticisms of policies affecting the public lands and the urge for change have led to the creation of commissions to make detailed studies of the operation of the public land system and to report to Congress recommendations for improvements. The first of these was authorized by an Act of March 3, 1879, when there was much dissatisfaction at the ease with which the settlement laws—Homestead, Preemption, Timber Culture, and Desert Land Acts—were being abused to accumulate land that was theoretically open only to farm makers. An able Commission took an abundance of testimony in the West which to the historian is one of its most valuable contributions and brought forth the expected recommendations for repeal of those measures most subject to abuse and the placing of additional safeguards in others. It also codified in three volumes the nearly 3,000 general and special laws Congress had enacted since 1789 and Thomas Donaldson, a member of the Commission, prepared his enormously valuable *The Public Domain: Its History with Statistics*. In 1,343 pages and 14 large maps and plats it provided an almost overwhelming array of statistics and background information concerning the acquisition of the public lands, congressional discussions leading to the enactment of important measures, and the operation of the land laws. Congress was not altogether convinced of the need for change and it was not until 1888-91 that a number of the recommendations of the Commission were to be adopted.

The second occasion was in 1903 when Theodore Roosevelt, responsive to the widespread complaints about abuses of settlement laws, appointed a commission "to report upon the condition, operation, and effect of the present land laws, and to recommend such changes as are needed to effect the largest practicable disposition of the public lands to actual settlers who will build permanent homes upon them, and to secure in permanence the fullest and most effective use of the resources of the public lands." A Commission of three distinguished leaders in public land, forest, and reclamation activities again brought in a valuable report showing weaknesses and strengths in government policies.

In 1929 President Herbert Hoover asked Congress for authorization to appoint a commission to make recommendations concerning the use and management of the remaining public lands, which were mostly valuable for grazing. He indicated that he favored giving these lands to the states which he felt could best administer them. Congress having responded favorably, a third distinguished Commission was appointed and shortly brought in its recommendation in line with the President's position. Its report was more modest than those of its predecessors but it stands as an illuminating document on the problems of public land management.

The fourth commission was authorized by Congress in 1964 at a time when many land issues were in need of attention and numerous measures relating to these issues were under consideration by Congress. It was thought advisable to have an intensive examination of every part of the public land laws, their administration, weaknesses, and inadequacies made by experts before further reforms were enacted in a piecemeal fashion.

The Commission decided to have prepared a history of the development of the land laws and the functioning of the land system and after some preliminary planning the present study was authorized in late May 1966. Time was of the essence for the

history was wanted well before the Commission had in hand the other studies it was arranging. Consequently, this study though it may appear long has very little on Indian lands, their allotment, management, and sale; very little on state lands; and nothing on the town site legislation, which all merit full investigations. Mineral land laws are treated by Professor Swenson in a separate chapter of this book. Specialists may recognize other areas where more attention might well have been given.

There was no intention of displacing Donaldson's *The Public Domain,* Hibbard's *History of the Public Land Policies,* Robbins' *Our Landed Heritage,* or Peffer's *The Closing of the Public Domain.* These works all have their strong points and should continue to be used for background information, public opinion on land proposals, and congressional discussions leading to the adoption of measures. Where these and other works on public land policies are particularly good on various phases of the land problems I have not felt it necessary to reproduce them or to rework their treatment. I have been more concerned with the functioning of the land system, the way it affected those seeking land ownership whether farm makers, speculators, lumbermen, livestock men, or town promoters. Since the constantly stated purpose of the land system and its individual laws was to make land available to the "actual settler," other than in the early years when the need for revenue counted heavily, I have tried to keep this in mind and to weigh the successes and failures according to the degree to which they contributed to that end.

This history of the framing and administration of public land policies is not primarily or even largely concerned with individuals. They have been mentioned only when they have been influential in shaping policy.

The early chapters of this study were read by Dr. E. Louise Peffer of the Hoover Institute and Professor Vernon Carstensen of the University of Washington. Both raised numerous questions which called for reconsideration of interpretations, emphasis, and allocation of space. Their appraisals were of much value and only the pressure of time prevented the submission of the later portions to their critical examination. Needless to say they have no responsibility for any errors or other weakness in the treatment.

Three of my graduate students, Thomas Jones, Stephen Strausberg, and Yasuo Okada were asked to investigate certain aspects of public land policies. With aid provided by the Public Land Law Review Commission they were able to work through major documentary collections in the National Archives and in Tennessee, Indiana, and Nebraska. A summary of Thomas Jones' study appeared in the *Tennessee Historical Quarterly,* Spring 1968, as "The Public Lands of Tennessee." Strausberg's study has developed into a detailed examination of the application of the public land laws in Indiana. While he was working through the enormous files of the correspondence of the General Land Office and the Treasury Department, he unearthed numerous letters bearing on questions I was writing on at the time and contributed a good deal to my treatment. Okada selected for his intensive study six townships in Gage County, Nebraska, a county whose deed records I had used some years ago in a hasty fashion to trace the land accumulations and rental policies of America's greatest landlord, William Scully. Here Okada applied the microscopic method of research in land history that Joseph Schafer had written about but never fully utilized. He came up with some very important data and a fresh treatment of the operation of the public land system where legitimate large-scale speculation and homesteading existed side by side.

Others of my graduate students in the past have been willing to subject themselves to the drudgery of intensive examination of economic problems affecting the West and the management and disposal of the public lands. Their studies are listed in the bibliography; here I must extend my thanks to them collectively for energy and imagination with which they pursued their researches and contributed to a fresh understanding of the part the public lands have played in the development of the United States.

Jerry O'Callaghan, whose doctoral dissertation on "The Disposition of the Public Domain in Oregon" was published as a committee print by the Senate Committee on Interior and Insular Affairs, and who has since forsaken the halls of Academe for public administration as Chief of the Office of Legislation and Cooperative Relations in the Bureau of Land Management, Department of the Interior, has been most helpful in providing documents and having data compiled.

Lillian Francis Gates has read every word of this study at least twice with a critical eye for errors of fact or interpretation, inconsistencies, faulty construction, and repetition. Her own work on the land policies of Canada before 1867 has given her a shrewd insight into American problems and provided me with interesting contrasts to the American story.

Miss Pennie Paynich, Administrative Officer of the Commission, has hastened the borrowing of numerous doctoral dissertations and provided me with frequent assistance that saved much time. Mr. Arthur Meyer, Editor of the Commission, brought his valuable experience as former Editor of the *Journal of Forestry* to the manuscript which he has much improved. Miss Mary Markovitch gave many late hours to typing and retyping the manuscript and putting tables in order.

I have had many conversations with Elmer Bennett, General Counsel and Head of the Legal Group of the Commission, and former Under Secretary of the Interior in the later days of the Eisenhower administration and have learned much of the technical problems of that department from him. He has borne with my crochets, has listened to my judgments, which must have appeared naïve to him on occasion, and has caught me in error on more than one occasion. Future historians of public land policies would surely appreciate the preservation of his recollections.

P. W. G.

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CHAPTER I

Whose Public Lands?

Great Britain established its sovereignty over and ownership of the region that became the Thirteen Colonies by right of discovery and by the ability of its navy to defeat France and Spain, rival claimants to territory in the New World. Only the right of occupancy was conceded to the Indians. When treaties were made with them for purchase of their land, this right of occupancy was ceded. The governors and proprietors negotiated such purchases on behalf of the Crown, and granted licenses to individuals to do so. Individuals also purchased Indian land without license and later sought confirmation of their Indian titles.

In extraordinarily liberal charters or grants to proprietors, the Mother Country created 13 separate governments. The boundaries of the Colonies were ill-defined, overlapping, and crossed with Indian occupancy claims and trading rights. Each Colony had its own legislature and enjoyed control of its internal affairs; its legislation was subject to royal disallowance if not in harmony with the laws and economic interests of England. Each Colony had its own system of granting land, under which officers and men enlisted for colonial wars received bounty land, and in the southern Colonies speculators and planters acquired large grants by bringing in laborers under the headright system.

During the 17th century, the Colonies enjoyed a long period of near self-government as a result of England's concentration upon her domestic troubles. The colonists thus acquired experience which made them resentful of the attempts of the Imperial Government after 1763 to establish common policies applying to all Thirteen Colonies. Doubtless some of these policies were justified, such as the instructions to the royal governors to limit the size of land grants and to require that they be "seated," that is settled, policies to establish control over the fur trade with the Indians and to prevent individuals from buying land from Indians. But it irked influential people that an absentee government in which they were not represented could exercise such powers.[1]

The Proclamation of 1763, though planned as a temporary measure, alarmed the Colonies for it ordered a halt to all settlement west of the Appalachians and raised questions as to the basis of the land claims merchants, planters, and traders had bought from the Indians. Notwithstanding the proclamation, rival speculating groups and rival Colonies were engaged in a constant struggle for western lands in the decade before the Revolution. The Quebec Act of 1774 tore away the region north of the Ohio from Virginia, Connecticut, and Massachusetts whose claims were apparently good though overlapping. At the same time, the British Government sent out new instructions halting all grants by colonial governors, ending the headright system, raising quitrents, and requiring that in the future prior surveys be made and that the land be sold at public

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[1] Sufficiently detailed and excellent in interpretation is Curtis P. Nettels, *The Roots of American Civilization: A History of American Colonial Life* (New York, 1963).



Scene on the Uncompahgre River, Colorado

U.S. Forest Service

auctions with a minimum price of 6 pence per acre.[2]

Thomas Jefferson in his "Summary View of the Rights of British America of 1774" took up the challenge, denying that the Crown had any right to grant lands or to withhold the granting right from the Colonies.[3]

> From the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed around itself, are assumed by that society, and subject to their allotment only. This may be done by themselves assembled collectively, or by their legislature to whom they may have delegated sovereign authority: and, if they are allotted in neither of these ways, each individual of the society may appropriate to himself such lands as he finds vacant, and occupancy will give him title.

This broad claim to ownership of land, based firmly on the views of John Locke, was to be reasserted in the Declaration of Independence of 1776 and achieved by the Treaty of Paris of 1783. Thereafter the question of Whose Public Lands was no longer to be thrashed out between a distant Mother Country and its young upstart in the New World, but between the sovereign states and the central government created by the Articles of Confederation.

Thomas Perkins Abernethy in his near classic *Western Lands and the American Revolution* has analyzed the position of the two sides which, during the American Revolution and the critical era, were disputing where control over the western lands should rest. He shows that Benjamin Franklin, John Dickinson, and other like-minded men favored placing control over the western lands with the Confederation, but the states with claims to land in the West were reluctant to consent. Advocates of state control were powerful enough to prevent the Articles of Confederation from being so worded as to give that power to the Government of the Confederation. Possibly the critical era was not as serious as John Fiske maintained but the weaknesses of the Articles were sufficient and the need for strengthening them so pressing that the states were later persuaded to surrender their western land claims to the Union, and in the Constitutional Convention of 1787 the states surrendered to the new Federal government the power to regulate commerce with the Indian tribes. In the acts of cession of their lands, however, were sown the seeds of persistent controversies over the question, Whose Public Lands.[4] (See map, Chapter V.)

Once the seven original states with claims to land west of the Alleghenies had surrendered them to the central government, issues of sales policy, price, credit, preemption, free grants to settlers, and donations for education, canals, railroads, and colleges took up increasing attention. But transcending these topics, and at the same time intimately associated with them, were nagging questions. Did the acts of cession of those early years and the later acquisitions of Florida, Louisiana, and California require that the lands be administered for the benefit of all the states, as the Original Thirteen States were inclined to maintain? Or should they be managed to assure speedy settlement of the newer communities into which they were being divided, without regard to the effects their rapid development would have on the older ones? Should the development of the western states be promoted by generous grants of public land within their boundaries to aid educational institutions and finance internal improvements such as roads, canals, and railroads? Should the states in which the lands lay, and not the Federal government, be the major dispenser of land titles? Had the older communities no right to a share in this largesse?

The first new commonwealth to emerge in the public land area was Ohio, which in 1803 attained the required population of 60,000—aristocratic landlords in the Military Tract;

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[2] St. George L. Sioussat, "The Breakdown of the Royal Management of Lands in the Southern Provinces," *Agricultural History*, 3 (April 1929), 67–98.

[3] Julian P. Boyd, *et al.*, *The Papers of Thomas Jefferson*, Vol. 1 (Princeton, 1950), 133.

[4] Thomas Perkins Abernethy, *Western Lands and the American Revolution* (New York, 1959), *passim*.



The Rush for the Promised Land

Bureau of Land Management
U.S. Department of the Interior

rough pioneer settlers developing small farms; squatters, tenants, and slaves. Congress, borrowing from New England's practice, granted Ohio the 16th section in each township for common schools, two townships of land for a seminary of learning, certain salt springs and surrounding areas, and in addition, 3 percent of the net land sale proceeds were to be expended by the Federal government for building roads to the state. A condition of these gratuities was that Ohio agree not to tax the public lands for 5 years from the date of sale without consent of the Federal government.[5] As Governor Arthur St. Clair said, Congress agreed to admit the new State of Ohio on a basis of absolute equality with the old states and in the same measure offered a contract to it that, if accepted, bound it to a position of inferiority that was most trying in the early days.[6]

Previous acts of Congress had pledged the net income from the public lands for the retirement of the public debt. Albert Gallatin justified the apparent breach of faith by arguing that grants for education and internal improvements would increase the value

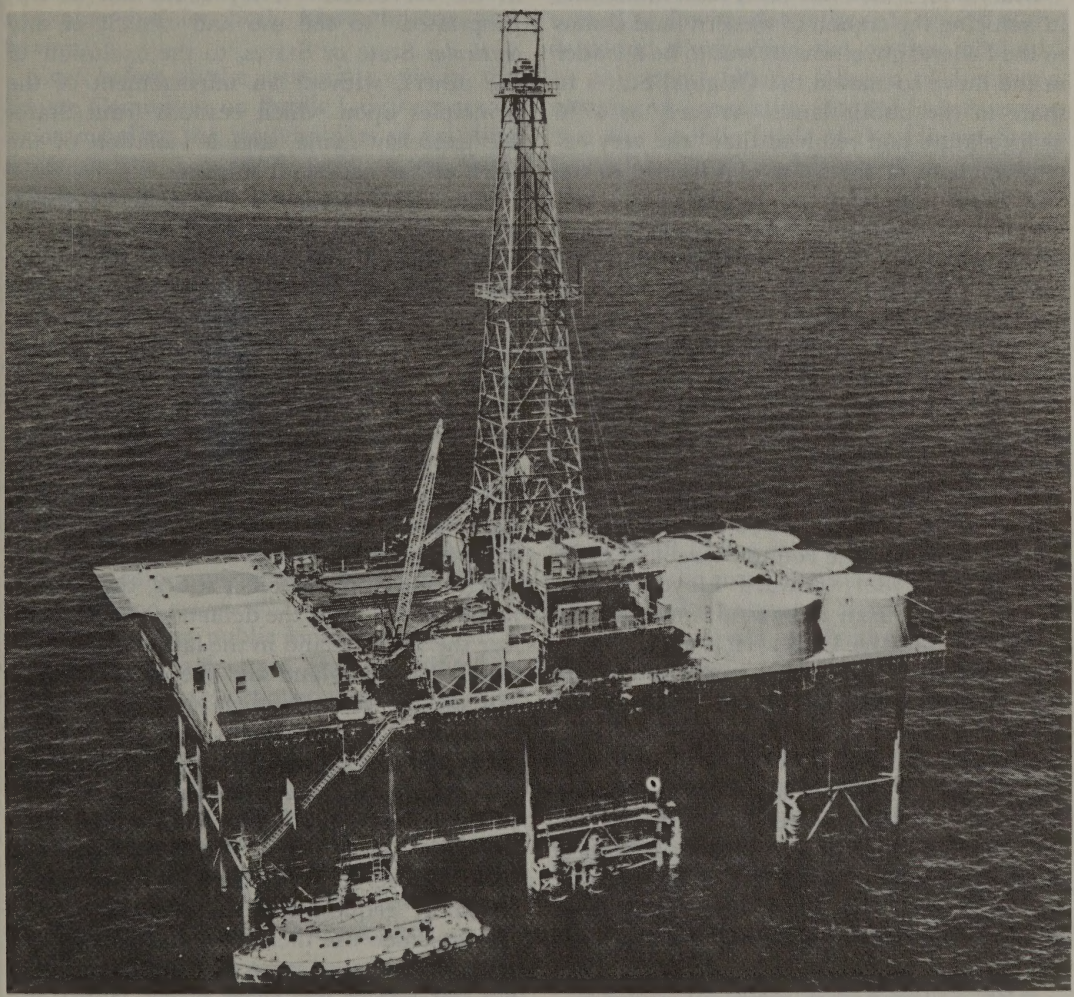
[5] 2 Stat. 175, 226.

[6] William H. Smith, *The St. Clair Papers* (Vol. II of "The Life and Public Service of Arthur St. Clair" [Cincinnati, 1884]), p. 596.

of the remaining public lands and thereby enhance the "pledge to the public creditors." Thus justification was established for the continually expanding generosity of the government toward the new states; to residents of the old states, it seemed to have no limit.

. . . the common sword, purse, and blood . . .

By 1821 seven states had been carved out of the public lands. They had been given $300,000 for roads within their boundaries and $200,000 had been spent in building roads to them—both amounts were from the proceeds of land sales. Also, 6,816,000 acres had been granted them for schools, seminaries of learning, public buildings, and salt spring management. Ultimately, these seven states were granted a total of 42,821,275 acres or 19 percent of their area. These Federal grants, all substantial figures for the time, played an important part in the building of



The Unending Search

Bureau of Land Management

roads, such as the heavily traveled Cumberland or National Road, and in the development of common schools. But if it was constitutional to grant land for public education and highways in the new states, why, it was asked, should not similar aid be given the older states, also out of the proceeds of public land sales? No sooner was the question raised than the Original States began petitioning for grants to aid them in establishing public schools.

Maryland, which had been most influential in inducing the cession of western land claims to the Federal government, was to be a leader in the move to enable the Original States to share in the public lands. As early as 1776 its legislature had resolved that "the very extensive claim of the State of Virginia to the back lands hath no foundation in justice, and that if the same or any like claim is admitted, the freedom of the small states and the liberties of America may be thereby greatly endangered: this convention being firmly persuaded that, if the dominion over those lands should be established by the blood and treasure of the United States, such lands ought to be considered as a common stock, to be parcelled out, at proper times, into convenient, free, and independent Governments."[7] The people of the Free State had no intention of letting the rest of the country forget this. On January 10, 1821, Edward Lloyd, United States Senator from Maryland, introduced a resolution into the Upper House instructing the Committee on Public Lands to inquire into the expediency of land grants to the old states for education corresponding with the grants to the new states. Before the committee could pass upon the matter, the Maryland Legislature prepared a report on appropriating lands for education, setting forth most of the arguments in behalf of the older states, and submitted it as a memorial to Congress. The soil and jurisdiction of the western lands had been won "by the common sword, purse, and blood of all the States, united in a common effort." Furthermore, the Louisiana Purchase and the purchase of the Indian title had all been paid for by appropriations from the common treasury. Justice therefore demanded, said the report, that the title and management of those lands should be turned over to the Federal government for the common benefit of all the states and that they should be sold to defray the expenses incurred in the Revolution. They could not be appropriated "to the use and benefit of any *particular* State or States, to the exclusion of the others, without an infringement of the principles upon which cessions from States are expressly made, and a violation of the spirit of our national compact. . . ."

The report estimated that some 14½ million acres of land—or, at $2 an acre, a subsidy of $29 million—would be granted for education to the new states if they were provided the same allowances Ohio and Indiana had received. To the argument that grants of land for education raised the value of remaining public land, Maryland replied that such grants also increased the value of privately owned land in those states and were therefore a boon denied property owners in the older states. At the same time, by making western lands more attractive and inducing emigration from the older states, the government was reducing the demand for and therefore the value of land in the latter. The report asked that Maryland and the older states be put on the same footing with the western states in drawing benefit from the public lands. Estimating what each non-public-land state ought to receive on the basis of area rather than population, it put the amount at 99,711 acres for little Rhode Island and 1,493,332 acres for Virginia. The Maryland Assembly requested that its Senators and Congressmen use their efforts to procure the enactment of a measure that would grant the old states their just share of the lands; and that copies of the report and memorial be sent to the governors of the other states with

[7] Appendix, *Congressional Globe*, 25th Cong., 2d sess., February 1838, p. 542. Delaware signed the Articles of Confederation with a reservation similar to that of Maryland of 1776.

the request that it be transmitted to their legislatures for the purpose of soliciting their cooperation.[8]

There followed in rapid succession memorials from Connecticut, New Hampshire, Rhode Island, New Jersey, Kentucky, Delaware, Maine, and Vermont asking for a share of the public lands for aid to education. New Jersey and Kentucky asked for the exact amount the Maryland report calculated they should have, while Maine modestly asked for 800,000 of the 966,332 acres the report had recommended for both Massachusetts and Maine.

Even before all the memorials were in, the Senate Committee on Public Lands reported, recommending the inadvisability of granting lands to the non-public-land states. Such grants would involve "an excessive proportion of their superfices . . . leaving but a small part of the land in each subject to taxation, or to settlement, except at the will of other sovereign states." Furthermore, it repeated that grants for education to states in which the lands were Federal had the effect of increasing the value of remaining public lands, as grants to the older states would not do. Also, the grants to the new states were a part of a bargain by which they surrendered their right of sovereignty over the public lands and conceded 5 years of tax exemption for all lands sold. The committee agreed, however, that it was "just and *expedient*" to give a percentage of proceeds from public land sales for public education in each state and territory, the amount to be apportioned on the basis of population.[9]

Again in 1826 the Legislature of Rhode Island requested its Representatives in Washington to procure an act of Congress appropriating to this smallest state "her proportion of the public lands" for "the establishment of an educational fund in this State." None of the states then or later seemed to be bothered by the prospect of jurisdictional conflicts which were almost certain to develop if they gained ownership of large bodies of land within other states.[10]

Meantime, the Treasury was accumulating a large surplus as a result of the rapid economic development of the country. Since this surplus was being applied to the purchase of the outstanding obligations of the United States, then mostly held abroad, it was feared that the outflow of money would before long produce serious financial distress. Discussion turned to slowing down the redemption of the debt and diminishing the outflow of funds. At this point Henry Johnson of Louisiana introduced a resolution into the Senate urging that the "public lands of the United States be appropriated, and pledged as a permanent and perpetual fund, for Education and Internal Improvements." Under his plan, all net income from public land sales was to be invested and the interest distributed among the states according to their representation in the House; one-half was to be used for education and the other half for internal improvements. Possibly in answer to this resolution Rufus King, Senator from New York, proposed in the same session that, when the portion of the national debt for which the public lands were pledged was paid off, the net proceeds of all future sales should be inviolably applied to the emancipation and removal outside the United States of slaves and free men of color. Now the fat was in the fire. Robert Y. Hayne, a defender of slavery and states' rights, declared that the use of public funds for the emancipation and removal of the slaves was a violation of the compact between the states, dangerous to the safety of the states, and "calculated to disturb the peace and harmony of the Union."[11] Both sides of the slavery question let off a little steam, but in doing so delayed consideration of the use of the surplus for purposes other than retirement of the debt.

[8] *Annals of Congress*, 16th Cong., 2d sess., 1820–21, pp. 151, 154, 328, 384, 1772 ff.

[9] *American State Papers, Public Lands*, III, 496.

[10] *American State Papers, Public Lands*, III, 500 ff.

[11] *Register of Debates*, 18th Cong., 2d sess., Dec. 22, 1824; Feb. 18 and 28, 1825; I, 42, 623, 696.

Distribution of Receipts

In 1826 distribution of the Federal surplus, whatever its source, or of the net proceeds from the sale of public lands, came up again in Congress. A report of the House Committee on Public Lands recommended the investment of a portion of the net proceeds and the distribution of the earnings therefrom to the states on the ratio of representation in the House. The report by James Strong of New York was diffuse, rhetorical, and not very convincing.[12] Almost simultaneously a Senate resolution to consider dividing a portion of the surplus among the states was referred to a select committee from which Mahlon Dickerson, a conservative states' rights Democrat, brought forth on May 11, 1826, a concise and ably presented argument in favor of distribution. It pointed out that using the surplus to retire the debt, largely owned abroad, drained the United States of needed funds. Distribution of a portion of the surplus to the states for education and internal improvements would "give new activity to industry and enterprise" in all the states. It would allay the jealousy aroused by the fact that 3 percent of the net income from public land sales was going to the states in which the sales were held. It would end disputes about the constitutionality of appropriating Federal funds for internal improvements, for such direct Federal appropriations could no longer be demanded. Finally, it would relieve the Federal government of the "serious inconvenience of an overflowing Treasury."[13] The report was so well received that three thousand extra copies were ordered printed.[14]

On February 25, 1829, a select committee of the House brought in a report on distribution that merits consideration, for it set forth the viewpoint of the eastern states in blunt language. The "time has arrived," the report declared, "when the community should be awakened to a protection of their rights; when measures should be adopted in the National Councils to give the States a direct interest in the income arising from the sales of the public lands." Distribution of the net proceeds from public land sales would check further concessions or grants to the western states and prevent the West from playing one party off against the other in its search for donations and liberalization of land policies. No "surer guard to the purity of legislation with respect to the public lands" could be devised than to direct that the net returns from land sales be distributed to the states. Members of Congress would think twice about appropriating lands for one purpose or another when they were aware that all such appropriations would reduce the sum their states would draw from the Treasury. It would also "interest the States in the adoption of a system of rigid economy, as relates to the expenditures of the land offices, and no private or other claim would be sanctioned but as their justice might be clearly established."[15] Though some members of Congress deplored the selfish attitudes being taken on distribution, each side ascribed these to the other and rarely admitted anything but the loftiest motives in their own thinking. This report, however, was not one of the more elevated documents dealing with distribution.

Again, in 1829 and 1830, the House of Representatives had to go through the long struggle over distribution, or at least over the "expediency" of bringing in a bill to provide for it. Jonathan Hunt of Vermont introduced the resolution to have the Committee on Public Lands consider the subject. Spencer Pettis of Missouri thought it was not the time to consider distribution.[16] It would have the effect of delaying if not making impossible

[12] *American State Papers, Public Lands*, Feb. 24, 1826, IV, 750 ff.

[13] *American State Papers, Finance*, May 11, 1826, V, 501 ff.

[14] *Register of Debates*, 19th Cong., 1st sess., Vol. II, Part 1, p. 708.

[15] *House Reports*, 20th Cong., 2d sess., Feb. 25, 1829, No. 95 (Serial No. 190); *American State Papers, Public Lands*, V, 797.

[16] *Register of Debates*, 21st Cong., 1st sess., p. 477.

the reforms in land disposal the West wanted and expected; these included preemption, graduation of the price of land, donations to settlers, and cession. Furthermore, as long as the public debt was unpaid, distribution should be postponed. Pettis expressed a western viewpoint that was long to prevail, saying that "the people of the new States desire to see some reasonable prospect for the arrival of the period when the title of the United States to lands within their several limits may be extinguished." Only when the debt was retired would it be proper to consider distributing the proceeds from the public lands.[17] An unusual number of House members spoke on the question, indicating the central position land problems were taking in American politics. Finally, after a month of discussion, the House approved the resolution. A select committee was appointed; it brought in the expected report recommending distribution.[18]

Congress had refused to grant preemption and to concede lower prices for land long on the market, and also was threatening to halt further surveys and not to open additional land to settlement (the Foote Resolution); smarting under the attack of eastern Congressmen, and contemplating what they regarded as outright neglect of their interests by Congress, spokesmen for the western states now took the offensive. Governor Ninian Edwards of Illinois complained in 1828 that although the new states had been admitted on a basis of absolute equality with the old, they were not equal. The central government had retained the public lands, managed them, extracted revenue from them and, as a result, achieved power and influence over the states' political and economic lives that it did not have in the other states. Edwards maintained that the Constitution gave the Federal government no power to exercise control over the public lands in a state after its admission to the Union. The bargain made with the states—exemption of public lands from taxation for 5 years after their sale in return for grants for education—was binding only until admission, not thereafter, for the states were to be equal. After admission the public lands surely must belong to the states. The Legislature of Illinois proceeded more slowly than its Governor, memorializing Congress in 1829 for graduation, preemption, or donations to settlers, and urging that cession of the lands to the states would solve the land question so far as the Federal government was concerned.[19]

Outright cession was asked by the Legislatures of Alabama, Indiana, Louisiana, and Missouri, in addition to Illinois, between 1828 and 1833. A memorial of the Indiana Legislature was particularly sharp in tone, insisting that Indiana be placed on a plane of absolute equality with the Original States.

> This State, being a sovereign, free, and independent State, has the exclusive right to the soil and eminent domain of all the unappropriated lands . . . which right was reserved for her by the State of Virginia, in the deed of cession . . . being confirmed and established by the articles of confederacy and the Constitution of the United States.

The Indiana Representatives in Congress were instructed and the Senators were requested to exert every effort to procure from Congress the cession of the public lands, which would place Indiana on equal footing with the Original States.[20]

Proposal to Limit Sales

The jealousy and hostility of the old states, it seemed to the West, reached its height in 1829 when Samuel Augustus Foote, Senator from Connecticut, brought forth a proposal that public land sales be limited for a time to those already offered for sale and

[17] *Ibid.*, p. 486.

[18] *Ibid.*, pp. 477–540; *House Reports*, 21st Cong., 1st sess., July 1, 1831, Vol. III, No. 312 (Serial No. 201), p. 8.

[19] I have followed here Raynor G. Wellington, *The Political and Sectional Influence of the Public Lands, 1828–1842* (Boston, 1914), pp. 16 ff.

[20] *American State Papers, Public Lands*, V, 630

that the office of Surveyor General be abolished. It was not unnatural that a Yankee from Connecticut (a state with a mere 3 million acres) should be confused. He probably had not been through the wide sweep of territory opened to settlement extending from Ohio through Indiana, Illinois, Michigan, Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Florida, where some 210 million acres had been surveyed, 30 million sold, and an additional 75 million offered for sale and opened to entry. In the first place, there were five surveyors general instead of one, as he had assumed. In the second place, at the rate the lands had been entered in 1817–20, the backlog of offered land would be taken up in 21 years, and at the rate they were to be entered in 1835–36, the backlog would be taken up in only 4 years. Foote could not appreciate that there were in each public land state or territory settlers, investors, and land companies who had looked over the land well in advance of the permanent settler and, before it was surveyed, had made selections and were waiting to purchase when survey lines were run and the lands offered for sale. To have halted sales and surveys would, for the time, bring to an end the business in lands in which new communities indulged and which, in fact, was the principal occupation of the people. Congress had tried in the Act of 1807 to prevent intrusions on unsurveyed and unoffered land but the General Land Office had wholly failed to enforce the measure. For Congress in 1829 to halt the surveying and offering of new land at auction seemed to the West a policy deliberately designed to curb its growth.

Thomas Hart Benton promptly jumped into the fray, angrily calling the proposal a method "of checking emigration to the West," and sure "to inflict unmixed, unmitigated evil upon the New States and Territories." He declared, "the signs are portentous; the crisis is alarming; it is time for the new States to wake up to their danger and to prepare for a struggle which carries ruin and disgrace to them, if the issue is against them."[21] He spoke of "the woeful improvidence of the new States in parting with the right to tax the Federal lands when they come into the Union . . ." and in obtaining no stipulation for the sale of the lands in a reasonable time, and for a fair price.

> Such improvidence placed them at the mercy of those who are not responsible to them for the votes they give, who are strangers, who live a thousand miles off, and may labor under the belief that they have an interest in checking their growth. . . This is the weak and dangerous part of our system. It is taxation without representation, and that in its direst form; not of a few pence on a pound of tea, or on a quire of stamped paper, but of land; power to tax it in the price, to demand double price; to do worse, to place it above all price, as this resolution proposes to do, withdraw it from market, and deliver it up to wild beasts!

Benton drew attention to the experience of Massachusetts which had retained its public lands in Maine, had nurtured the province along, "ripened her into a state," and divided the public land with her. Now it was selling its share for 5 to 25 cents an acre in contrast to the $1.25 an acre exacted by the Federal government.

Robert Y. Hayne of South Carolina took up the challenge of Foote and others from the northeastern states, differing from them sharply, less so with Benton; his object was to cement a political alliance between his own section and the West on land and tariff questions. In the course of his peroration he observed how great the interest in public land questions had become:

> More than half our time has been taken up with the discussion of propositions connected with the public lands; more than half of our acts embrace provisions growing out of this fruitful source. Day after day the charges are rung on this topic, from the grave inquiry into the rights of the new States to the absolute sovereignty and property in the soil, down to the grant of a preemption of a few quarter sections to actual settlers. . . . A question that is pressed upon us in so many ways; that in-

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[21] *Register of Debates*, 21st Cong., 1st sess., Dec. 30, 1829; Jan. 18, 1830; pp. 2–7, 23.

> trudes in such a variety of shapes; involving so deeply the feelings and interests of a large portion of the Union; insinuating itself into almost every question of public policy, and tinging the whole course of our legislation cannot be put aside or laid asleep.[22]

Hayne compared the United States policy of exacting a high price for its lands with that of other countries, which he was convinced had given lands away for a slight payment or rent, and with the free grant policy of the American Colonies. He pointed to the great burden of farmers' debt for which the policy was responsible. He disliked the use of the public lands as a national treasure, which he felt was corrupting. He scored the policy of limiting sales in the West in order to retain labor in the industrial centers of the East, and the policy advocated by some of distributing the income from land sales among the states. He deplored the demands of the western states for grants for various purposes, and suggested that the best solution of the public land question was to relinquish the lands to the states for a price that would recover the cost of surveying and preparing them for market.

To Hayne's charges that New England had been averse to land legislation looking toward the construction of internal improvements and facilitating the growth of the West, Webster's reply was not altogether effective, nor indeed correct, nor did it dispel the view that the northeastern states had watched with alarm the admission of the new western states. It was, however, a magnificent defense of a broad interpretation of the Constitution; it repudiated the Hayne view that the public lands in the hands of the Federal government and the income derived from them were a corrupting influence; and it presented a clear statement of the nationalizing influence of the public lands. Webster glossed over his section's past parochialism, and indeed his own, and argued for the close economic ties with the new West in which he personally and his constituents were to invest great sums of money.[23]

The Webster-Hayne debate was conducted under the eye of that master theorist on the sovereignty of the states and the limited power of the Federal government—John C. Calhoun—who, as Vice President, was forced to listen and not trumpet forth his views. It took up much of the Senate's time from December 1829 until May 1830 when, on motion of Samuel Bell of New Hampshire, the Foote Resolution was tabled. During this excited debate the western grievances concerning the public lands, which Benton had brought to the fore and Hayne had amplified, were permitted to slip into the background in favor of concentration upon the nature of the Government of the United States.

Henry Clay's Distribution Bill

The public debt rose to its highest point in 1815. Thereafter it declined slowly until 1830 when a series of annual surpluses wiped it out completely and left a large surplus in the Treasury.

Among the options available to Congress, or at least pressed upon it, in this unusual and rather pleasant period of substantial surpluses from 1825 through 1836, were: (1) preemption that would curb competitive bidding for land; (2) reduction or graduation of the price of land or free grants to settlers; (3) cession of the public lands to the states; (4) reduction in the tariff which until 1836 was bringing in the larger part of the government's income; (5) lavish expenditures on internal improvements; or (6) distribution of the net returns from the public lands to the states or deposit of the surplus revenue in the Treasury to the credit of states on the basis of their representation in the Congress.

Henry Clay and most Whigs opposed the first four options or any combination of them.

[22] *Ibid.* Jan. 19, 1830, p. 32.

[23] Webster could not have been ignorant of the huge land sales of 1815–19 which reached 5,475,648 acres in the latter year and yet in his reply to Hayne he declared the sales had never been over a million acres.

Tariff protection was essential for the infant industries then springing up and should be maintained at its existing level, if not increased. Reduction in the price of government land would have a baneful effect on land values elsewhere, would drain off population to the West, and, some feared, would aid in making that region the dominant section of the country. Cession of land to the states, as Clay was later to say, would be tantamount to robbing the Original States of a share in valuable property which they had created. Free land or a reduction in the price of government land would likewise rob the older states of some of the benefits they hoped to receive from sharing the proceeds of the public lands. Clay favored internal improvements through land grants and government loans, but saw little chance to secure the adoption of extensive programs of construction because of Jackson's certain opposition and threat of veto. Distribution of the proceeds of land sales would bring to each state a considerable sum for whatever purpose it might choose, including internal improvements. True, distribution according to congressional representation would assure the older and more populous states the lion's share, but Clay included in his proposed distribution scheme a smart device to win western support. Each public land state was to receive a bonus of 12½ percent of the net income from sales of land within its borders, along with its share of the remaining 87½ percent. The bait of the bonus was calculated to count heavily with western Representatives, as it did. Three of the seven public land states would receive much more from the bonus than from their share of the remainder, and all seven would fare more favorably than if there were no bonus.[24]

[24] In the *American State Papers, Public Lands*, VI, 451, is a table showing what the allotments would be after deducting 15 percent of the proceeds and on p. 515 is a table showing the gross receipts from the lands in the various states. In his annual message to Congress of December 8, 1829, Jackson had favored apportionment of the surplus revenue among the states when the public debt was extinguished. James D. Richardson, *Messages and Papers of the Presidents*, II, 452.

SOURCES OF NATIONAL INCOME AND REDUCTION IN THE DEBT[a] (IN THOUSANDS)

	Total Federal Receipts	Customs Receipts	Land Sales	Debt
1831	$28,527	$24,224	$3,211	$39,123
1832	31,866	28,465	2,623	24,322
1833	33,948	29,033	3,968	7,012
1834	21,792	16,215	4,858	4,760
1835	35,430	19,391	14,758	38
1836	50,827	23,410	24,877	38

[a] *Historical Statistics of the United States* (Washington, 1960), p. 712.

During the debate on Clay's distribution bill in 1832–33 and again on Jackson's veto message various arguments were set forth that were to be repeatedly advanced in the intersectional combat over "whose public lands." Stated simply, the Northeast wanted to share in the proceeds of the public lands which the Original States either had ceded or had helped to buy, and it wished to keep the price of western land at a level that would not drain off its population. The South, fearing the growth of Federal power, disliked Federal handouts through distribution, which might tend to aggrandize the central government and cause the states to look to it increasingly for gratuities. The West wanted low land prices or free land, and was anxious to have the lands ceded to the states, which presumably would administer them in a way more satisfactory to local interests.[25] Both East and West took a sectional

[25] The congressional debates on the distribution measure may be followed in the *Register of Debates*, 22d Cong., 1st sess.

The Senate vote on distribution on July 3, 1832, as analyzed by Henry Tatter is interesting:

	For	*Against*
Northeast	18	2
Old South	1	9
West	7	7

Henry Tatter, "The Preferential Treatment of the Actual Settler in the Primary Disposition of the Vacant Lands in the United States" (Ph.D. dissertation, Northwestern University, 1932), p. 261.

view, neglecting the broad question of national welfare and progress. Thomas Hart Benton, a leading Jackson lieutenant in the Senate, argued that the older states had eaten their cake and wanted to have it too. He only mentioned Massachusetts and Connecticut which had refused to surrender their land in Maine and in the West but he might also have mentioned the large amount of public land remaining in the possession of New York, Pennsylvania, and Georgia at the time the cessions were being made.[26]

Debates in the Senate on distribution had strong political overtones, for the measure was part of Clay's efforts to weaken Jackson's following in preparation for the election of 1832. Clay had the votes, and both before and after the election succeeded in carrying the measure in the Senate. On July 3, 1832, it was voted 26 to 18 and on January 25, 1833, 24 to 20. In the House it passed by a vote of 96 to 40. The Northeast was very largely for the bill and only the most ardent Jacksonian had the courage to stay with his leader in opposition to a measure that was so popular in that section. In the South Atlantic states, opposition was very strong from both Jackson's and Calhoun's followers because of the fear of strengthening the Federal government's influence. Clay's supporters in the public land states were favorable to distribution but of course the Jacksonians were opposed.[27] Though a Presidential veto was expected and it was clear that Clay lacked sufficient votes to carry the measure over the veto, it was still good politics to force the Jacksonians into an unpopular step.

Jackson played a "cool" hand, withholding his signature from the bill at the time and sending in his veto message in December. In this message he disregarded his earlier recommendation that the surplus revenue be apportioned among the states. He stressed that the lands belonged to all the states and that the income from them should not be distributed with a bonus to the public land states. Having taken this position, he proceeded to advocate a reduction in price, in preference to high prices with distribution. At the same time he urged that lands remaining unsold for some time should be ceded to the states in which they were located. In this way he pretty well boxed the compass, though he was careful to say that only the refuse lands should be ceded.[28]

Deposit of Treasury Surplus with States

Clay was not discouraged by Jackson's peculiar logic and kept the issue of distribution before Congress year after year. In 1836, the Senate was persuaded to vote again for Clay's pet measure and again there was strong support in the House despite the virtual certainty that Jackson was no more kindly disposed toward it than he had been earlier. Meantime, another bill for distributing the surplus was moving its circuitous way through or around congressional barriers and for the moment it diverted attention from Clay's bill. This was the deposit bill which, among other things, provided for the deposit with the states, on the basis of their representation in Congress, of the Treasury's surplus on January 1, 1837, less a reserve of $5 million. Inasmuch as the big increase in Federal revenue that had created the surplus was from the sale of public lands, the Deposit Act would accomplish much the same thing as Clay's distribution bill; the income from the public lands would go to the states, but with no bonus. In 1836 the country was greatly excited over internal improvements—turnpikes, canals and railroads—giving little attention to whether or not they would be self-supporting after construction. There was much speculative activity in lands whose values were expected to rise rapidly. Depositing the Treasury's surplus of millions of dollars with the states would make it possible for them to finance projects that could not otherwise be realized. Members of Congress found it easy

[26] *Register of Debates*, 22d Cong., 1st sess., June 28, 1832, p. 1147.

[27] *Register of Debates*, 22d Cong., 1st sess., p. 1174 and 22d Cong., 2d sess., pp. 235 and 1920; Wellington, *The Political and Sectional Influence...*, pp. 39 ff.

[28] *American State Papers, Public Lands*, VI, 616 ff.

to vote for the deposit bill and even Andrew Jackson was reluctantly brought to sign the measure on June 23, 1836, though it included features against which he had argued in his veto of the distribution bill.[29]

Deposit of the surplus began on January 1, 1837, and in the succeeding quarters a total of $28 million was transferred to the states. This was about the equivalent of the increase in land sales for 1834–36 over the average of the previous 10 years. It was this increase which had created the surplus, for there was no comparable increase in other sources of government income. Only three of the four installments planned for the deposit of the $37 million surplus were made. A sharp contraction of government income from land sales and customs induced Congress to order the fourth installment withheld, notwithstanding angry objections.[30]

Unhampered by the compromise of a bonus to the western states, the Deposit Act accomplished just what Clay had wanted. The proportion of the surplus deposited with the old and the more populous states was larger and that to the public land states much smaller than they would have received under the distribution bill. Sixty-three percent of the deposits went to the Thirteen Original States and if the three other non-public-land states (Kentucky, Vermont, and Tennessee) are included, 79 percent of the deposits went to the states in which there was no public land. Jackson's action in vetoing distribution and signing deposit worked well for his own State of Tennessee and neighboring Kentucky, as well as for the Original States, but it did not work as well for Ohio, Indiana, Michigan, or other western states. The table of deposits helps explain why there were so many complaints about the unfairness of the act. The average amount deposited with each of the 17 non-public-land states was $1,310,058 while the average amount deposited with the nine public land states was $638,822.[31]

DEPOSITS TO STATES UNDER ACT OF 1836

Alabama	$669,086
Arkansas	286,751
Connecticut	764,670
Delaware	286,751
Georgia	1,051,422
Illinois	477,919
Indiana	860,254
Kentucky	1,433,757
Louisiana	477,919
Maine	955,838
Maryland	955,838
Massachusetts	1,338,173
Michigan	286,751
Mississippi	382,335
Missouri	382,335
New Hampshire	669,086
New Jersey	764,679
New York	4,014,520
North Carolina	1,433,757
Ohio	2,077,260
Pennsylvania	2,867,514
Rhode Island	382,335
South Carolina	1,051,422
Tennessee	1,433,757
Vermont	669,086
Virginia	2,198,427

[29] 5 Stat. 55.

[30] E. G. Bourne, *History of the Surplus Revenue of 1837* (New York, 1885). This is still the standard work on the disposal of the surplus and the use the states made of their share, but regards the surplus as partly derived from increased customs collections, as well as from the increased land sales. Bourne relied for the former on the receipts for 1834, 1835, and 1836 in which years there was a large increase. But for the 10 years of 1827 through 1836, the average income from customs was $22,823,000 or $600,000 less than the figure for 1836. Customs receipts had sharply contracted from the previous highs of 1831, 1832, and 1833 and in 1836 were about back to normal. Land revenues, on the other hand, jumped from an average of a little more than $2 million from 1827–33 to $14,758,000 in 1835 and $24,877,000 in 1836.

[31] *Ibid.*, pp. 40 ff. The case of Michigan is an illustration of how badly deposit worked from the point of view of a western state strongly contributing to the surplus. Land sales in Michigan had swelled greatly in 1835 and 1836 contributing $7,500,000 in revenue or $7,250,000 more than the average for the previous 10 years, while its deposit was only $286,751. Small wonder that people of Michigan talked about the drain of funds to the East by the land and deposit policy. Bourne (p. 143) was more concerned with the per capita amount of the Michigan deposit (using population data of 1830) which was $9.07 as compared with the per capita amount—$1.63—if the population of 1837 were the basis.

The old states fared well under the Deposit Act as they had earlier, when the income from the public lands was being used to retire the national debt for which they, as the richest and most populous states, had the major obligation. But they were still dissatisfied as they watched each successive new state carved out of the public lands being treated generously with land grants for education and internal improvements.

Tariffs and Public Land Proceeds

Deposit did not end the cry for distribution which came up regularly in every session of Congress until 1841. Since Jackson would not consent to distribution, Representatives of the landless states brought forth another proposal. Chilton Allan, a Democrat from Kentucky, proposed that each of the Thirteen Original States plus Maine, Vermont, Kentucky, and Tennessee should be given land in the West for purposes of education, in proportion to the donations given the new states. To meet the objection that one state should not hold land in another he advocated leaving the lands thus granted to the Federal government, which would manage and sell them under its laws. To avoid reference to the Public Lands Committee, which was packed with westerners, Allan proposed to refer the matter to a special committee consisting of one member from each state; thus the old states would be in control.[32] Samuel F. Vinton, a Whig Representative from Ohio, then proposed an amendment to the Allan bill requiring payment to the public land states of the value of improvements made by them in the public lands, or payment of the amount the public lands would have been assessed for taxes had they been in private ownership. Vinton declared that these proposed grants for education would not be a gratuity to the western states since the government had received from them an equivalent in higher prices for land and speedier sales.

Abijah Mann, a Jacksonian Democratic Representative from New York State, following his leader's line, struck hard at the Allan proposal, declaring that it was "neither more nor less than a new edition of the old and exploded idea of distributing the proceeds of the sales of the public lands, attempted to be concealed under rubbish and verbiage, and gilded over by the patriotic idea of applying it to public education." He declared that "its paternity is suspicious, and its hope falacious and delusive." Kentucky and Tennessee, which led the movement for such grants or distribution had, he declared, made "lawful prize" of the lands within their own boundaries and now wished to share in a new division of the spoils.[33]

The following year William Cost Johnson, Whig Representative of Maryland, made one of the longest and best reasoned arguments in support of a proposal for the older states to share in the public lands. He went back to the Maryland Constitutional Convention of 1776 to trace his state's position that "each of the United States had an equal right to participate in the benefits of the public lands, the common property of the nation," and quoted from the cessions of the states beginning with New York and concluding with Georgia, which had uniformly stated that the lands thus ceded should be held as a common fund for the use and benefit of all the states according to their respective proportions in the general charge and expenditure. Johnson showed how generously the western states had been treated and expressed the view that it was time the older states should draw similar benefit, now that the lands were no longer needed to repay the public debt for which they had been pledged.[34]

In 1840 and 1841 the Whigs did their utmost to put through Congress another distribution bill similar to the one Jackson had vetoed. The western states as well as the older ones had borrowed lavishly to finance their internal improvement schemes and to

[32] *Cong. Globe*, 24th Cong., 2d sess., Jan. 4, 1837, p. 71.

[33] *Ibid.*, p. 72.

[34] *Cong. Globe*, Appendix, 25th Cong., 2d sess., February 1838, p. 342.

expand their credit facilities. When the Panic of 1837 struck, they were faced with heavy debts they could not pay and had to default on their obligations.[35] Various proposals to restore the credit of the defaulting states were considered, including an effort to induce the Federal government to assume the debts, which exceeded $170 million. This proposal obtained little support among Jackson's Democratic followers but a new distribution bill, this time made more palatable to the West, did gain favor. Distribution would aid the states in resuming payments on their discredited obligations and might counter the rising tide of reform sentiment in the West calling for graduation of the price of land, preemption, and cession. In legislature after legislature, now under Whig control, resolutions were adopted instructing Representatives to vote for distribution. A Massachusetts resolution declared that the public lands, whether acquired by conquest, cession, or purchase, were "emphatically the property of the Union and ought to inure to the use and benefit of all states in just proportion" and could not legally be appropriated to the use and benefit of one; thus the resolution hit hard at grants then being made to each western state. In addition to declaring for distribution, Massachusetts condemned graduation of the price of lands as injurious to all states. Similar resolutions were adopted by Vermont, Rhode Island, Kentucky, New York, New Jersey, Pennsylvania, and North Carolina. Under the control of Democrats loyal to Jackson, New Hampshire opposed distribution, as did Ohio, Missouri, and Georgia.[36]

To win support in the West for distribution, now being increasingly demanded in Congress, a prospective preemption clause was grafted onto the bill. This provision for the first time would allow settlers to move upon and develop a quarter-section of surveyed land before it was offered at public auction and to purchase their tract before auction at the minimum price of $1.25 an acre without having to bid for it against speculators. The West had long worked for such a measure but Congress had only grudgingly given way by adopting a series of retrospective preemption measures forgiving illegal settlement of the past. A second major concession to the West was the inclusion of a section that would give to each public land state which had not as yet received it a half million acres for internal improvement. Louisiana, Michigan, Mississippi, and Missouri, the only public land states not having received land grants for internal improvements, would have been the immediate beneficiaries. New states admitted after 1841 were to receive the same bounty. Finally, each western state was to receive 10 percent of the net proceeds from the sale of public lands within its borders together with the 5 percent already authorized for internal improvements. This would leave 85 percent of the net proceeds to be distributed to all the states on the basis of their representation in Congress. Unlike the deposits of the Act of 1836, the distribution funds were to be outright grants, not recallable deposits. An amendment to the distribution bill that would have allowed the western states to tax public lands the day they were sold was defeated in the Senate by a vote of 22 to 18.

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[35] R. C. McCrane, *Foreign Bondholders and American State Debts* (New York, 1935), pp. 6 ff.

[36] *House Journal*, 26th Cong., 1st sess., 1839–40 (Serial No. 362), pp. 202, 278, 636, 668, 721, 943, 948; and 26th Cong., 2d sess., 1840–41, pp. 225, 235, 237; *American State Papers, Public Lands*, VI, 654, 951; *Laws of New Hampshire, 1837*, p. 290; *Laws . . . 1839*, p. 416; *Laws of Missouri, 1838–1839*, p. 342. Interestingly, after the adoption of the Distribution Act the South Carolina Legislature declared that it would not appoint an agent to receive the funds, so strongly was it opposed to the measure; the Maine Legislature declared that distribution was "subversive of the principles of our free institutions" and that it threatened "to transform our Republican system of Government into one of arbitrary and consolidated powers." New York and Missouri Legislatures urged the immediate repeal of the Distribution Act. *House Journal*, 27th Cong., 2d sess., 1841 (Serial No. 400), pp. 395, 662, 739, 800.

Before the measure was passed by Congress an additional change was made to assure that John Tyler would not veto it. It was amended to provide that distribution would be suspended if customs duties were later to be raised above the 20 percent level of the Tariff Act of March 2, 1833.[37] As in the first distribution measure of 1833 and the Deposit Act of 1836, the Original States had triumphed by securing a share in the proceeds from the sale of public lands. However, Jackson's veto of 1833, his Specie Circular of July 11, 1836, which had the effect of ending the surplus and consequently further deposits, and the Tariff of 1842 which was to stop distribution almost as soon as it began, were frustrating experiences to those anxious to secure a share of the proceeds of land sales for all the states.

The Distribution Act of 1841, despite the 10 percent bonus, prospective preemption, and the 500,000-acre grants, was not altogether satisfactory to the West. Money spent for land in the West flowed back to the East for distribution to the older states. Actually, land sales in 1841 were down to the lowest point since 1828 and during the short time distribution was in operation, only $691,117 was available for transmission to the states. Of this, $453,512, or an average of $26,677, went to the non-public-land states, whereas $237,605, or an average of $19,800, went to the public land states.[38] Even in states where land sales were the heaviest and where the 10 percent bonus would count most, the sums distributed were well below those going to the more populous states like New York and Pennsylvania. The distribution clauses of the Act of 1841, for which Clay and the Whigs had fought so long, were operative for but a short time because the tariff was raised above the 20 percent level. The preemption provisions remained in effect, however, and the half-million-acre grant to each new state on admission was retained.

[37] Act of Sept. 4, 1841, 5 Stat. 453.

[38] Compiled from statistics in Thomas Donaldson, *The Public Domain* (Washington, 1884), p. 753.

The increasing pressure for higher protection on manufactured goods and the great need to stop the disastrous deficits of 1837–38 and 1840–41 (which continued through 1843) seemed to leave the government no alternative but to raise the customs duties. The only other important source of revenue was land sales. They had fallen sharply since the peak year of 1836 and to increase land prices in the depression would be politically suicidal and would only reduce sales further. President Tyler realized the awkward position of the Whigs with whom he was now in dispute, and recommended suspension of distribution which would relieve the Treasury somewhat. The Whigs saw things differently, enacted higher duties on some goods just a week after distribution was adopted, and included in this tariff bill a clause declaring that if the increases raised rates above the 20 percent level, distribution should *not* be suspended.[39] They next tried to repeal the section of the Distribution Act that would automatically suspend payments when duties were raised above the 20 percent level, but Tyler refused to sign it. When, therefore, the full-dress revision upward of the tariff schedules was adopted on August 30, 1842, Tyler had the satisfaction of seeing his policy of suspending distribution fully vindicated: a provision was included specifically declaring for the suspension of the 10 percent bonus feature. This was on the assumption that automatic suspension applied only to the general distribution of the 85 percent of the net proceeds of land sales to all the states and not to the special 10 percent.[40]

Though 1832–33, 1836, and 1841 seemed to give the old states minor victories in their struggle for a share in the proceeds of the public lands, time was on the side of the western public land states. They were threatening to exceed the older states in population

[39] Act of Sept. 11, 1841, 5 Stat. 463; *House Journal*, 27th Cong., 2d sess. (Serial No. 400), pp. 1035, 1423, 1444.

[40] Act of Aug. 30, 1842, 5 Stat. 567.

and to swamp their representation in Congress as new territories were raised to statehood. In 1840 the public land states contained 28 percent of the entire population of the country, 33 percent in 1850, and 40 percent in 1860. If the population of Vermont, Kentucky, Tennessee, and Texas is added to that of the public land states, the population of the new states amounted to 39, 44, and 50 percent of the total in the same years. By 1861 there were 34 states, of which 16 were public land states, anxious to gain as large a share as possible of the public lands within their borders and equally anxious to keep the original and older states from sharing in those lands. Although virtually all the public lands were gone in three of those public land states—Ohio, Indiana, and Illinois—their Representatives were sometimes found voting with Representatives of the Original States on land questions.

Accelerating Demands on the Public Lands

Neither cession to the new states—their ultimate objective—nor grants to the old were to come in the form requested, but increasing liberality to the new states and a form of grant to the old were attained. The grant for common schools to public land states, originally one section in each township, became two sections in 1850 and four in 1896. Grants for other purposes were progressively increased. Thus Ohio, the first of the public land states, received 10 percent of its acreage for state purposes; Florida and Arkansas, by virtue of large swampland grants, received 68 and 35 percent, respectively, of their total acreages; Alaska, admitted in 1958, is scheduled to have 27 percent of its land. Had the land grants to the transcontinental railroads been given directly to the states, as they were in the states of the Mississippi Valley, the share of those like California, Montana, and Washington would be much greater than they appear—as is shown in the chapters on "Grants to States on Admission to Union" and "General Grants to States." By 1850, well over 100 million acres of public land had been given to the states in which they were located for schools, universities, canal and railroad building, and swamp drainage, but not an acre had yet been granted to the Original States for any such purpose.[41] Congress, under growing pressure from its new western Representatives and Senators, showed a marked tendency to meet their demands for an increasing proportion of the public lands for local purposes. Meanwhile, the older states watched this development with concern and, indeed, exasperation, fearing that their opportunity for benefiting from the public lands was waning rapidly.

In the forties and fifties several attempts were made to give the eastern states a share in the public lands. In 1845 Kenneth Rayner of North Carolina offered an amendment to a bill to grant additional land to the Wabash and Lake Erie Canal; the amendment would have given 500,000 acres of public land to each non-public-land state. The defeat of the amendment by a vote of 46 to 87 showed that if the East was to get its share of the lands, it would have to unite solidly behind some generally acceptable measure, as westerners did when they wanted land grants for their section.[42]

The next move to bring some direct benefit from the public lands to the Original States came through the efforts of Dorothea Dix. In 1848, Miss Dix presented a memorial asking Congress for 5 million acres of land to be divided among the 30 states and sold by them for funds to build modern facilities for the care of the insane.[43] This most dedicated woman, who had spent years of her life studying the care of the mentally ill both in the United States and abroad, described in vivid language the frightfully bad housing condi-

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[41] I arrived at this figure by adding the grants made through 1850 as shown in the *Annual Report of the Commissioner of the General Land Office, 1929, passim.*

[42] *House Journal*, 28th Cong., 2d sess., 1845 (Serial No. 462), pp. 538–39.

[43] *S. Misc. Doc.*, 30th Cong., 1st sess., 1848, No. 150 (Serial No. 511).

tions and the inhuman treatment of these unfortunates. Miss Dix's passionate concern caught the attention of both pro- and anti-slavery leaders, strict constructionists and broad latitudinarians, merchants, lawyers and politicians.

From the introduction of her memorial in 1848 to the favorable vote in both Houses of Congress in 1854, Miss Dix persistently lobbied to break down resistance to the use of public lands for philanthropic purposes. The original crude measure went through numerous changes to increase the aid, extend its purposes, and make it more acceptable. In 1849 a new measure included a provision for a 12,500,000-acre grant to the states; of this, 10 million acres were to be used for improving the care of the insane and 2,500,000 for the care of the deaf, dumb, and blind. In 1852 a bill for 12,250,000 acres for care of indigent insane passed the House; and in 1854, a bill granting 10 million acres to the states for this purpose provided: that each of the 31 states was to receive an initial grant of 100,000 acres, and that the balance was to be divided among them on the basis of a compound ratio of geographical area and representation in Congress.

Landless states were to receive scrip for the amount of land to which they were entitled, were to sell it, and were not permitted to use it to acquire land for themselves in other states. The scrip was to be sold at not less than $1 an acre. Before the scrip feature was included one member of Congress had asked why 30 states should be compelled to create agencies to manage the lands; would it not be better, he inquired, to have the regular land offices sell the land and credit the returns to the states.

Franklin Pierce's own State of New Hampshire was much in need of the aid the Dix bill would have given, though neither of its Senators nor any of its four Representatives had voted for it. But Pierce was a strict constructionist of the school of John C. Calhoun; he could find no justification for the use of public lands to improve the care of the insane. True, in 1826 a measure to give a township of public land to aid a deaf and dumb asylum in Kentucky had been adopted with wide majorities in both Houses; this followed a long battle extending over three sessions of Congress, with constitutional questions being raised. Though some regarded the grant to a deaf and dumb asylum as a precedent for favorable action on the Dix bill, Pierce and his Democratic supporters could not agree. His veto message and political pressure took away enough support previously given so that the advocates of the measure could not pass it over his veto. The first general bill to enable the Original States to share directly in the public lands was thus defeated, though not by a purely sectional vote—Miss Dix had won over many Congressmen from the public land states, including Dodge and Walker of Wisconsin, Geyer of Missouri, Gwin of California, and Chase and Wade of Ohio.[44]

The second major effort to secure a share in the public lands for the older states was led by Henry Bennett, Representative from New York State. In 1852, there were many measures before Congress for land grants to western states to aid in railroad construction. Bennett proposed to combine them in an omnibus measure also granting to the 17 non-public-

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[44] The Dix bill, as approved by both Houses is in *Senate Journal*, 33d Cong., 1st sess., 1853–54 (Serial No. 689), pp. 372 ff. For the Senate vote on the 1854 bill and the vote to pass the measure over the veto see *ibid.*, 243, 479. The House vote is in *House Journal*, 33d Cong., 1st sess., April 19, 1854 (Serial No. 709), pp. 669–70. Outstandingly useful are Francis Tiffany, *A Life of Dorothea Lynde Dix* (Boston, 1892), and H. E. Marshall, *Dorothea Dix: Forgotten Samaritan* (Chapel Hill, N. C., 1937). The Act of April 5, 1826, granting a township of land to the Deaf and Dumb Asylum is in 6 Stat. 339. Efforts were made to extend its provisions to similar institutions in other states but were resisted. *Register of Debates*, 19th Cong., 1st sess., 1826, pp. 371 and 1603. Most of the land actually received by the asylum (22,508 acres) was located in Florida with a small portion in Arkansas. The act provided that the lands should be sold within 5 years, but for various reasons Congress granted extensions for the Florida lands until 1862. Donaldson, *The Public Domain*, p. 212.

land states 150,000 acres for each Senator and Representative they had in Congress (frequently spoken of as the Federal ratio). This generous measure would have given 34,698,000 acres to the public land states and 29,250,000 acres to the non-public-land states with New York getting the most—5,400,000 acres—and Delaware the least—450,000 acres. The donation to the old states was to be used solely for common schools. Assignable land warrants were to be issued to the old states which were required to sell them, and neither directly nor indirectly to locate them. This was required in order to avoid the danger of jurisdictional clashes over the ownership by one state of large blocks of land located in another state. Bennett maintained that by bringing together in one measure all the proposals for land grants to railroads, all areas of the public land states would have their needs treated impartially, and bickering over numerous special measures would be avoided. Bennett must have thought that by combining all the projects of the public land states with the grants to the older states, he had devised a sure-fire measure that would receive congressional approval.

In the House Bennett won strong support from the Northeast: New England voted 19 to 2, New York 19 to 4, and Pennsylvania 12 to 8. The original slave states stood to benefit generously, as did the Northeast, but were sufficiently bothered by their conservative constitutional views to vote strongly against the bill. The major opposition, however, came from the public land states where people could well feel they would get their lands for railroads without compromising with the East and where the strongest opposition existed to letting the East have any share in the public lands. (In later years emphasis was placed upon the argument that since the older states had managed their lands as they wished, the new states should have the same privilege.) Bennett won a narrow victory, 95–92, in the House but failed to get the measure through the Senate, which voted on somewhat the same sectional basis not to take up the House bill.[45] In 1854 Bennett made a second effort to obtain for New York and other Original States a share of the public lands. By a smart but controversial parliamentary maneuver, he managed to get his bill from an unfriendly committee and have it placed on the calendar for discussion. For months he kept the Bennett Land Distribution Bill, as it was now called, from being tabled, while trying to gain support from the many Representatives of the older states who had abstained from voting in 1852. Ultimately, this bill was overwhelmed by the aroused western bloc which in 1855 succeeded in ending the bill's persistent career, though by a close vote of 69 to 66.[46]

Meantime, lobbyists in Washington were running wild in their efforts to secure railroad land grants. Evidence was accumulating that the influence of political brokers—frequently former members of Congress—was essential to secure the coveted action. Charles Beard's "Great American Barbecue" was well underway. The Original States had failed in their effort to gain their share, chiefly because they were unable to mass their strength as the West did when its peculiar interests were jeopardized. From collective action which came close to success with the Bennett bill, the non-public-land states now turned to numerous special projects for which they individually wanted aid. A flood of bills and memorials descended upon Congress asking for grants to the old states for railroads, normal schools, canals, tunnels, and a ferry system. Thus Charles Sumner proposed a grant of a million acres to aid the construc-

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[45] *House Journal*, 32d Cong., 1st sess., 1851–52 (Serial No. 632), p. 831, and *Senate Journal*, 32d Cong., 1st sess., 1851–52 (Serial No. 610), p. 660.

[46] *House Journal*, 33d Cong., 2d sess., 1854–55 (Serial No. 776), p. 419. Bennett showed that more than a hundred million acres had been given the states which, had they been sold, might bring in $150 million and expressed his feeling at the niggardliness of western Representatives in not being willing to provide so ne largess to the old states. *Cong. Globe*, 32d Cong., 1st sess., 1852, pp. 1536, 2100, 2438, and 33d Cong., 2d sess., 1854–55, p. 837.

tion of a tunnel through Hoosac Mountain for a railroad to connect Boston with Albany; and Zena Scudder asked for 700,000 acres to aid the extension of the Cape Cod Railroad and the establishment of steam communication from the Cape to Nantucket Island. Pennsylvania Congressmen asked for 2,380,611 acres to aid in building the Sunbury & Erie, the Hempfield, the Pennsylvania Central, the Williamsburg & Elmira, the Pittsburgh & Connellsville, the Ohio and Pennsylvania Railroads and the North Branch Canal, and to increase the common school fund and endow a normal school for the gratuitous education of female teachers.[47] New York wished a "sufficient donation" of the public lands to secure the construction of a canal around the Falls of Niagara, and actually won the support of Wisconsin for this project.[48] Maine sought grants for the Atlantic & St. Lawrence and the European & North American Railroads; Kentucky wanted 900,000 acres for a railroad to connect Louisville with the Mississippi River and grants to aid four other railroads; and William Churchill wished one million acres to extend the South Carolina and Tennessee Railroad.[49] Many other memorials requested grants to the older states for education. Strict constructionists from the South and opponents from the West easily succeeded in referring these numerous memorials to hostile committees. They were never heard of again. The failure of their repeated efforts to secure a share of the public land led the New York Legislature to resolve in 1858 that the New York delegation in Congress be requested "not to vote any further appropriations of the public lands to the new States until some just general provision be made, by which the original States shall receive their equitable proportion of the said lands, or the proceeds thereof."[50]

With so many demands for land grants by both old and new states, it was natural for John Wilson, Commissioner of the General Land Office—known as an outspoken and at times crusty commentator—to recommend in his annual reports for 1853 and 1854 a land grant for education in the District of Columbia. He envisioned a university where instruction could be obtained in literature, mechanics, agriculture, and civil institutions on a scale comparable with the military and naval academies. The plan is reminiscent of an earlier proposal by Charles Lewis Fleischmann for the use of the Smithson fund as an endowment for a national agricultural college. Neither Fleischmann's nor Wilson's plan was seriously considered by others at the time they were offered, but both may have had some part in leading to the adoption of the Morrill Act of 1862. That act, however, did not include any benefits for the District.[51]

John Wilson made another contribution to the discussion of "whose public lands" during a concerted drive of the old states to

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[47] *Cong. Globe*, 31st Cong., 1st sess., 1850–51, pp. 22, 131, 337, and 33d Cong., 1st sess., 1854, p. 195.

[48] *Cong. Globe*, 33d Cong., 1st sess., pp. 28, 516, 1461. *S. Misc. Doc.*, 35th Cong., 1st sess., 1858, Vol. IV, No. 261 (Serial No. 937); *H. Misc. Doc.*, 35th Cong., 1st sess., 1858, Vol. III, No. 131 (Serial No. 963). Later, during the Civil War when there was a strong movement to build a ship canal around the Falls at Niagara but with outright appropriations of money instead of land, petitions and memorials descended upon Congress in support of the move, from Ohio (4), Wisconsin (2), the Chicago Board of Trade, Detroit, The Merchants' Exchange of St. Louis, the Boston Board of Trade and citizens of Portsmouth, New Hampshire. *Senate Journal*, 38th Cong., 1st sess., 1863–64 (Serial No. 1175), p. 1013.

[49] *Cong. Globe*, 31st Cong., 1st sess., 1850, pp. 108, 118, 160; 32d Cong., 1st sess., 1852, pp. 258, 673; *House Journal*, 31st Cong., 2d sess. (Serial No. 594), p. 120.

[50] *S. Misc. Doc.*, 35th Cong., 1st sess., 1858, Vol. IV, No. 261 (Serial No. 937).

[51] "Memorial of Charles Lewis Fleischmann, in relation to the Smithsonian Legacy," *H. Doc.*, 25th Cong., 3d sess., Dec. 14, 1838, Vol. III, No. 70 (Serial No. 346), and reprinted in *H. Doc.*, 26th Cong., 1st sess., March 5, 1840, Vol. III, No. 128 (Serial No. 365); "Annual Report, Commissioner of the General Land Office, 1853," *S. Ex. Doc.*, 33d Cong., 1st sess., Vol. I, No. 1 (Serial No. 690), pp. 84–85; *H. Ex. Doc.*, 33d Cong., 2d sess., Vol. I, No. 1, Part 1 (Serial No. 777), p. 80.

gain a more direct share in the public lands. He pointed out that the bounty lands given veterans of the Revolution and of the War of 1812 had "flowed mostly to the citizens of the old states, and, say, one-half of those for services in the Mexican War." Of the income derived from the sale of public lands which had permitted lower tariff rates, the "vastly more populous" old states had derived the major benefit, which he calculated at $113,676,758.67. He added to this sum $32,108,970 representing the value of the 25,687,177 acres of military bounty lands that went to people in the older states, and the $409,912.42 distributed to them under the Act of 1841, arriving at a total of $146,-195,641.09 which he claimed had benefited "chiefly, if not entirely," the people of the old states.[52] There is no evidence that Wilson's reasoning had any effect in allaying eastern fears that the public lands were rapidly being given away without any direct grants going to the old states and that the revenue from public lands would soon dry up.

Lands for Education

Notwithstanding the numerous defeats, success was to come to the non-public-land states—including the Original Thirteen and Maine, Vermont, Kentucky, Tennessee, West Virginia, and Texas—but only when they could frame a bill offering something the West wanted as much as they did. Such a joining of mutual interests was achieved when agricultural reformers united their efforts to secure land grants for colleges of agricultural and mechanic arts. The original call for Federal aid had been made by Jonathan Baldwin Turner of Illinois in 1851 and during the next 11 years was taken up by the United States Agricultural Society and distinguished groups of writers, scientists, and administrators, including Marshall Pinckney Wilder, America's best known fruit specialist; Joseph R. Williams, President of Michigan Agricultural College; and Freeman G. Cary, President of the Farmers' College of Cincinnati. It was pushed to success in 1862 by Justin Smith Morrill, Congressman from Vermont.

The original measure, borrowing heavily from the earlier Dix and Bennett bills, provided for grants to the public land states of 20,000 acres for each Senator and Representative they had in the Congress, while giving scrip instead of land to the older states on the same formula. The geographical area feature of the Dix bill was left out, thereby reducing the amount of land western states would receive. As in the Bennett bill, the scrip was not to be used to acquire land by the older states but was to be sold to third parties. The Federal ratio assured New York, Pennsylvania, and Ohio the largest grants and the new western states coming into the Union with their sparse populations, the least. This seeming unfairness and the virtual certainty that the issuance of millions of acres of scrip would further land speculation led many westerners to look with disfavor upon the Morrill bill. Sam Medary, an influential Ohio Democrat, presented both the western view that the old states had no right to land in the West and the southern states' rights position in his denunciation of the bill. He condemned it as "infamous," a "regular plunder scheme," a "disgrace" to Congress, a "base swindle." It plundered both the government and the western states where the lands were located. It was designed to build up a great agricultural college in New York whose supporters saw it as a means of replenishing their pockets.[53] Senator Alexander Ramsey of Minnesota later called the scrip for which the act provided a "great curse to the land States of the West," destructive of the "the settlement and progress . . . of the West." Jim Lane of Kansas called it "iniquitous," certain to ruin his state, a contradiction to the homestead law,

[52] "Annual Report, Commissioner of the General Land Office," *H. Ex. Doc.*, 33d Cong., 2d sess., Vol. I, No. 1, Part 1 (Serial No. 777), p. 83.

[53] Columbus, Ohio, *The Crisis*, July 2, 1862.

and unconstitutional. On the other hand Senator Jacob Collamer of Vermont assailed the "grudging illiberality" of the new states to the old and Senator John Bell of Tennessee and Justin Smith Morrill argued that the western states had been treated with great generosity in the distribution of the public lands and it was time that the older states got some small benefit.[54]

When the new measure reached the voting stage one sees somewhat the same division that was reflected in the vote on the Bennett bill. New England was solidly favorable—28 to 0 in the House, 9 to 0 in the Senate; the Middle Atlantic states voted 38 to 16 in the House and 4 to 0 in the Senate; the Old South was strongly in opposition; and the public land states, and Texas, voted against—27 to 43 and 8 to 15. The idea of sharing lands within their states either with eastern states or their assignees was still regarded most unfavorably.[55]

Buchanan's veto delayed the measure but in 1862 it was easily put through despite great opposition in the West; the amount per Representative and Senator in Congress was increased to 30,000 acres.[56] Thus New York State became entitled to receive scrip for 990,000 acres, Pennsylvania for 780,000 acres, Ohio for 630,000 acres. Altogether 18 non-public-land states received scrip for 5,250,000 acres; three states in which the public lands were exhausted—Ohio, Indiana, Illinois—received scrip for 1,500,000 acres; and five public land states of the South—Alabama, Arkansas, Florida, Louisiana, and Mississippi—which seceded received 900,000 acres in scrip rather than land when they were restored to the Union, though they still contained an abundance of public land. The greatest anomaly in the act was the donation of 180,000 acres in scrip toTexas, which possessed its own huge supply of public lands. A total of 7,830,000 acres in scrip was thus distributed. Was the distribution fair? The older states certainly had no reason to complain. On the other hand it annoyed the West that Massachusetts, for example, received the equivalent of 360,000 acres while Missouri, which was eight times larger, received only 330,000 acres, or that Minnesota received the same grant that tiny Rhode Island was given.[57]

The withdrawal from Congress in 1861 of the Southern Representatives, who were mostly strict constructionists, made it easier for the Federal government to assist internal improvements in the West. No longer was it necessary to use the public lands as an indirect device to provide Federal subsidies for canals, railroads, and later for education. The change can be seen in proposals for building a ship canal around the Falls at Niagara. Before 1861 it was thought that only a land grant could accomplish the objective. After the withdrawal of the Southerners a land grant was no longer talked about. Instead an outright cash appropriation was proposed. True, no action was taken to appropriate money for this enterprise but the opposition to it was based on grounds other than constitutionalism.

Although the constitutional straightjacket was loosened, the donation of public lands or the income derived from them continued to be a favorite device to give aid to education and to assure some direct benefits to the old states. A scattering of bills continued to be offered proposing, among other things, land grants to each state to aid in the support of women's colleges and a donation of 2 million acres for the benefit of public schools in the

[54] *Cong. Globe*, 35th Cong., 1st sess., April 20, 1858, p. 1895; 35th Cong., 2d sess., Feb. 1 and 7, 1859, pp. 722, 856; 37th Cong., 2d sess., May 22, 1862, p. 2275; and 40th Cong., 1st sess., March 26, 1867, p. 347.

[55] The vote of the Representatives and Senators by states is given in Paul W. Gates, *The Wisconsin Pine Lands of Cornell University* (Ithaca, N. Y., 1943), p. 20.

[56] *Cong. Globe*, 35th Cong., 2d sess., Feb. 26, 1859, pp. 1412, 1414; 12 Stat. 503. For the state-by-state vote in 1862 see Gates, *op. cit.*, p. 22.

[57] A summary of all the land grants to states, including the A & M grants is available in the *GLO Annual Report, 1932*, pp. 45 ff.

District of Columbia which had received no scrip from the Morrill Act.[58]

More than a flurry of excitement about the use of public lands for education occurred in 1872. It was partly spurred by the states' disappointment at the meager returns from the sale of their college scrip and by the inability of the new agricultural and mechanical (A & M) institutions to generate any very effective program in agriculture and industrial arts. To focus attention upon the near failure of the new colleges, resulting from insufficient support, the United States Commissioner of Agriculture, in consultation with many leading agricultural authorities and officials of the state institutions, called a conference in Washington early in 1872. Apparently the objective was to ask Congress for more aid for the colleges and perhaps more generous treatment of the Department of Agriculture. Some 160 persons came together at a National Agricultural Convention. They included such well-known men as A. B. Allen and Ezra Cornell of New York, Marshall Pinckney Wilder and C. L. Flint of Massachusetts, John H. Klippart of Ohio, William W. Folwell of Minnesota and Senator Morrill. In such a diverse group drawn from all but one or two states there was bound to be considerable wrangling over objectives and the means to attain them.

Proposals to grant additional land for the A & M institutions were prominent in the discussion. Members from the old states favored land grants and those from the new states preferred the donations of proceeds from the sales of land. William W. Folwell of Minnesota objected vigorously to what he called the discrimination in the Morrill Act which gave new states so little in comparison with the grants to the old states. Folwell favored equalizing grants, based partly on area and not solely on population, that would assure each state a minimum of a half million acres. Others favored equalizing grants of a million acres to each state. Sectional feelings and a tendency of the members to wander from one subject to another prevented the adoption of a request for any such generous aid. Senator Morrill did succeed in inducing the convention to ask Congress for a donation of land, *or the proceeds therefrom*, sufficient to "found a professorship of some of the branches of practical science" in each of the A & M colleges.

The National Agricultural Convention brought together the leading spokesmen for technical training of young farmers and made them aware of common problems and of divergent interests. The convention helped keep before the people questions relating to public lands and had its part in intensifying eastern desires for a share of the proceeds. At the time it strengthened the conviction of the West that the public lands should be granted to the states in which they were located and that no further grants should be made to the old states.[59]

Influenced by the discussion on the floor of the convention concerning the inadequacy of the support for A & M institutions and the inequity of the Act of 1862, Senator Morrill introduced a bill to grant one million acres to each state for the benefit of the colleges. He was quite aware of western sentiment against grants of land or scrip for lands in the states or territories and he later amended his measure to provide that the proceeds from the sale of lands, rather than the lands themselves, should be thus granted; he also reduced the acreage from one million to half

[58] *Senate Journal*, 40th Cong., 1st sess., 1867 (Serial No. 1307), p. 69; *Senate Journal*, 41st Cong., 1st sess., 1869 (Serial No. 1392), p. 187.

[59] The "Proceedings of the National Agricultural Convention" of Feb. 15–17, 1872, as published in the *S. Misc. Doc.*, 42d Cong., 2d sess., 1872, No. 164 (Serial No. 1482), are particularly valuable for the light they throw on the management by Ohio, Maine, New York, Illinois, and a number of other states of the scrip they received under the provisions of the Morrill Act of 1862. See especially the statements of Professor J. M. Gregory of Illinois Industrial University, Ezra Cornell, William W. Folwell, and John H. Klippart.

a million. The bill passed the Senate on January 14, 1873, by a vote of 39 to 14 but meantime a broader measure to give both old and new states the full net return from the sale of public lands had been taken up and passed the House of Representatives.[60] Introduced by Legrand W. Perce of Mississippi (an ex-New Yorker), the bill was intended to create a National Education Fund into which should flow for investment one-half the net proceeds from public land sales; the balance of the net proceeds and the annual income from the Fund was to be apportioned to the states, territories, and the District of Columbia on the basis of population. For the first year the states and territories were to allocate 50 percent of the income to them for the establishment of normal schools; thereafter, 10 percent of each state's share was to be devoted to this purpose. The measure drew able support from New England, New York, Ohio, Indiana, and Illinois and that of Republicans from Mississippi and other southern states, particularly after it was amended to provide that the distribution to the states for the first 10 years "shall be made according to the ratio of illiteracy of their respective populations. . . ." In the discussion George Frisbie Hoar of Massachusetts and Washington Townsend of Pennsylvania had twitted the southern Democrats about the high illiteracy rate prevailing in their states. No one could argue that the money available for distribution under the bill would be sufficient to work miracles (judging by past accounts the amount for all states might come to $1,200,000 yearly), yet it would provide funds for education where little was currently available. A combination of the Republicans concerned about the educational needs of the South and the old state Representatives still hopeful of drawing some direct benefit from the public lands was successful in carrying the measure to adoption in the House by a vote of 117 to 99.[61]

Both Houses had thus passed bills in 1872 and 1873 to provide aid to education through grants to the states of proceeds from public land sales; but in the end, it proved impossible for the conference committee to resolve the differences. The issue was not permitted to die, however. Morrill in the Senate and other friends in the House continued to speak in behalf of land grants or proceeds derived therefrom for the A & M colleges, and bill after bill was introduced in 1874, 1875, 1876, and later but without results.

By 1880 Morrill had assembled an able group of lieutenants to help him push through the Senate his favorite bill for the creation of an educational fund from the proceeds of the public lands. Among them were George Frisbie Hoar of Massachusetts, General Ambrose E. Burnside, Senator from Rhode Island, Henry W. Blair of New Hampshire, and James G. Blaine of Maine. Their measure now provided for investing the net proceeds of public land sales, after deducting the expenses of the Patent Office, in United States Government bonds; the annual interest was to be apportioned to the states and territories on the basis of their population between the ages of 5 and 25, except that for the first 10 years, apportionment was to be made according to the number of people 10 years and older who could neither read nor write. One-third of the income from the endowment was to go to the support of the A & M institutions, until the annual income of each had reached $30,000; the other two-thirds and ultimately all the revenue from the fund was to go for common schools. In the end the measure was amended to allow 50 percent of the first year's income and not over 10 percent thereafter to be devoted to the instruction of teachers for common schools. Skillful and

[60] *Cong. Globe*, 42d Cong., 2d sess., Feb. 23, 1872, p. 1177, and 43d Cong., 3d sess., Jan. 14, 1873, p. 570, and *Senate Journal*, 42d Cong., 2d sess. (Serial No. 1477), Feb. 23, 1872, p. 275.

[61] *House Journal*, 42d Cong., 2d sess., 1871–72, Feb. 7 and 8, 1872 (Serial No. 1501), pp. 287–308.

patient advocacy by Morrill, a speech by Burnside that fills 15 columns of the *Congressional Record*, and speeches by Hoar and Blaine maneuvered the bill into such a situation that few Senators dared vote against it, for they would be voting against aid to education in which all professed to believe. Senators dubious about the bill for one reason or another had tried to make it innocuous by loading it down with amendments and when they failed, absented themselves from the final vote. It was a triumph for Morrill that 41 votes were cast for the measure and only six from the most confirmed states' rights Senators against. At the time, few could have foreseen that the West would succeed in carrying a counter proposal that would provide for the use of the net income from the public lands for reclamation development in the far western states. It was notable, however, that with the exception of the two Senators from Colorado, all the Senators from the states to be so greatly benefited from later Federal subsidy to reclamation abstained from voting for Morrill's bill.[62] Tighter House rules made it possible to bottle up the Senate bill in committee and the movement to use the proceeds from public land sales for public education in all states thus failed.

Morrill and Blair were not discouraged and continued their efforts, year after year. They were ably supported by a series of agricultural conventions called in part to amass support for further aid to agricultural education and to provide grants for the financing of agricultural experiment stations. In 1887 came the first fruits of this long-sustained effort to give further government aid to agriculture through appropriations from the proceeds of public land sales. In that year, Congress adopted the Hatch Act (sponsored by William Henry Hatch of Missouri), which authorized appropriations of $15,000 out of the proceeds of public land sales, for agricultural experiment stations in each state and territory. Thus, harking back to Clay's measures of 1832 and 1841, a modest form of distribution designed to benefit all states was adopted. The Appropriation Act of 1888, however, provided the money out of unearmarked funds in the Treasury, thereby cutting off the relationship with public land sales.[63]

Perhaps the small victory which the older states gained in 1887 encouraged Senator Henry Blair who had assumed leadership in the movement to divert the income from public land sales to a general education fund. He devoted many hours in 1890 to reading letters and telegrams from educational leaders in all parts of the country supporting his measure, but members of Congress seemed to be tired of the issue and he got nowhere with it.[64] Morrill was more realistic than Blair: realizing that support for general aid to public schools by the Federal government was waning, he wanted to salvage something from his long efforts to aid the A & M institutions, with which he was much more concerned than public schools. After all, New England had long since tackled its common school problem and had greatly reduced illiteracy. If the balance of the country would not give the necessary number of votes, why continue the battle? Instead, Morrill proposed that an appropriation of $15,000 yearly be made to each state and territory for its land grant institutions; the money was to come from the proceeds of

[62] The Senators from California, Oregon, Kansas, and Nebraska abstained from voting; the Nevada Senators had not taken their seats when the vote was held. Of the other public land states both Senators from Minnesota, Alabama, Arkansas, Florida, and Illinois and one each from Iowa, Mississippi and Louisiana voted favorably. It was, however, an East-inspired measure. *Cong. Record*, 46th Cong., 3d sess., Dec. 15, 17, 1880, pp. 147, 227, 229.

[63] Act of March 2, 1887, 24 Stat. 441 and Act of Feb. 1, 1888, 25 Stat. 32.

[64] So long and tedious were some of Blair's speeches that they read at times almost like a filibuster. See numerous speeches in *Cong. Record*, 51st Cong., 1st sess., 1890, esp. pp. 1996 ff.

public land sales and to be increased $1,000 annually during the next 10 years. Such a modest request, calling for only $15,000 for each state and territory at the outset and only $25,000 for each in 10 years time, was in sharp contrast to the entire net proceeds from land sales which Morrill's previous bills had attempted to obtain for education. At the outset only $705,000 would be required annually and in 10 years the amount would be only $1,200,000, whereas cash receipts of the General Land Office in 1890 were $7,780,000.[65] Fifteen thousand dollars seems small, even petty today, when it would scarcely pay the salary of one professor, but it was not small in 1890. In that year, in fact, it was 50 percent more than the entire amount spent on agriculture at Cornell University, the New York State A & M institution. The representatives of the land grant institutions could well feel that they had won a major victory in this second Morrill Act. One may hazard the guess that the sum authorized by it was greater than all A & M institutions were expending on agricultural education in 1890 and greater than the total income all the institutions had received from the endowment derived from proceeds of the grants of 1862. Capitalized at 6 percent interest, the $705,000 was the equivalent of the return on an endowment of $11,745,000 and when the full sum of $25,000 was reached in 10 years, the annual payment would be the return on an endowment of $19,992,000.

At the same time, western opponents of Morrill's efforts to enable the older states to draw specific benefits from the public lands could well feel that by giving way on this small allotment to satisfy the man who had pressed them so hard and had won a major victory against them in 1862, they might forestall something much more unacceptable. Furthermore, the agricultural lobby was assuming strong proportions and some compromise seemed wise. One opponent of the Morrill Act said of the many representatives of the Agricultural Colleges who came to Washington in 1890 to lobby:

> They have haunted the corridors of this Capital; they have stood sentinel at the door of the Committee on Education; they have even interrupted the solemn deliberations of that body by imprudent and impudent communications.
>
> . . . . . .
>
> They have buzzed in your ears, sir, and in yours, and in the ears of every member of the House. It has been an organized, strong, combined lobby for the benefit of the agricultural colleges of the country.

He found their lobbyists far more upsetting to the decorum of the Congress and more objectionable than any other pressure group of the time. The lobby's activities and the desire to appease Morrill and settle for little led the Senate to approve the second Morrill Act without division and the House to vote 135 to 39 for it. It was signed into law on August 30, 1890.[66]

For the fifth time Congress had been persuaded to authorize drafts upon the public lands or the proceeds therefrom for the benefit of non-public-land states as well as for public land states, but it was the last victory to be gained. Furthermore, the total benefit the non-public-land states obtained from the Deposit and Distribution Acts, the land grants of 1862, the Hatch Act, and the second Morrill Act was a mere bagatelle compared with the 181 million acres given to the new states for various purposes and the 94 million acres given to western railroads to aid in their construction.[67] Yet the West would not permit the East to forget that the Original States had retained all their public lands within their final borders. On the other hand eastern representatives tended to insist,

[65] *GLO Annual Report, 1890*, p. 8.

[66] *Cong. Record*, 51st Cong., 1st sess., June 23 and Aug. 19, 1890, pp. 6372 and 8839; 26 Stat. 418.

[67] The total acreage granted to the public land states exclusive of Alaska was 197,555,625 by 1932. Alaska may ultimately receive 100 million additional acres. *GLO Annual Report, 1932*, p. 50. I arrived at the former figure by deducting the amount of land scrip granted the non-public-land states from the total grants to all the states.

especially after 1891, that the public lands in the West be retained in national ownership for the general benefit.[68]

Withdrawals for Public Purposes Begun

With the rise of the movement for preserving in government hands the greatest areas of natural beauty and wonder and the remaining forests on the public domain, there appeared a new rationale for sectional attitudes on the public lands. The older states which had permitted their seashores, mountains, waterfalls, and forests to be exploited by private interests now were declaring that the public lands belonged to all the people and should be retained in national parks and forests to prevent destructive and unsightly exploitation of priceless natural resources and to assure the best use and conservation of growing timber. Conversely, the West was resisting all such efforts and demanding the right to develop and utilize its resources without interference as the older states had previously done. No longer were eastern representatives talking about Federal grants of land or the proceeds from land for education. They wanted to have Grand Canyon, Bryce, Sequoia, and Crater Lake National Parks preserved and the national forests to become grazing and timber producing areas of increasing economic value to the Nation. Furthermore, as the rate of alienation, especially of forest lands, to private ownership increased, the pressure for enlarging the withdrawals for temporary or permanent public purposes increased. For example, between 1900 and 1909 the acreage placed in national forests was enlarged from 46,772,129 to 191,883,920 acres.[69] In addition, in 1909 there were 4,307,240 acres in national parks and monuments plus a number of million acres that were withdrawn for other purposes.

Revenue Sharing Principle Augmented

Although support for cession of all the public lands to the states in which they were located was still strong in the West in 1900, more realistic leaders like Representative Francis G. Newlands of Nevada recognized its futility. He came forth with a proposal that, when adopted in 1902, constituted the greatest victory of the western states in securing to them the benefits of the economic exploitation of the public lands. Only rivaling it is the Act of 1953 by which Congress granted to the coastal states ownership of the so-called tidelands with their valuable oil and gas resources. The Newlands Act of 1902 provided that money derived from the sale of public lands after the deduction of the 5 percent already going to the states of origin was to go into a revolving fund for the building of reclamation projects to irrigate the arid lands. The costs of constructing the

[68] Echoes of the controversy over sharing the benefits and income from the public lands were heard time and time again after 1890, though the position of the older states came to be expressed less vigorously and that of the public land states more stridently, dominating Federal policy increasingly. In the public hearings on a measure being considered by the Senate Committee on Public Lands and Surveys in 1926, a bold Yankee from New Hampshire, Philip M. Ayres, before a committe composed with one exception of Senators from the Great West, dared to express the view that income from any form of grazing control established on the public lands should go into the Federal Treasury for the benefit of all the states, because the public lands had been acquired by the blood and taxes of all the people. Hostile members of the committee had Ayres somewhat confused on the provisions of the bill by their questioning, but his views were clearly stated. The western committee members themselves seem to have been confused concerning the retention by the Federal government of the public lands in the new states as they were admitted; they also seemed unaware of the fact that never once did Congress deviate from the principle that the public lands belonged to the people of all the states and should be preserved for them, while at the same time it was providing for their liberal disposal under the settlement laws. "Hearings before the Senate Committee on Public Lands and Surveys on Grazing Facilities on Public Lands, 1926," pp. 109–134, 311.

[69] The acreage for 1909 excludes Indian reserves but includes private ownerships.

projects were to be repaid into the Reclamation Fund in the form of water charges. It was expected that from these two sources of income there would be a substantial flow of capital to make possible the construction of dams and reservoirs. By 1930 the total income from public land sales that went into the revolving fund reached $110,322,537 but collections on construction charges were well below expectations. Furthermore, the income from land sales had begun to dry up; they were less than a million dollars every year from 1924 to 1949.

This decline was more than offset by another major victory of the West and two minor victories in 1917 and 1920. The Potassium Act of October 2, 1917, provided that all the income from royalties and rentals in the mining of potassium on the public lands should go into the Reclamation Fund and that, after the completion of projects with such funds, 50 percent of the payments should be given to the states from which the royalties and rentals had come. The major victory was the Mineral Leasing Act of February 25, 1920. It provided that 52 ½ percent of income from sales, bonuses, royalties, and rentals from the mining of coal, oil, gas, and sodium on the public lands should flow into the Reclamation Fund, 37 ½ percent should go to the states of origin for roads and schools, and a mere 10 percent should go into the United States Treasury. The third measure, the Water Power Act of June 10, 1920, provided that 50 percent of the proceeds from the licensing of power sites should go to the Reclamation Fund, 37 ½ percent to the states of origin, and 12 ½ percent to the United States as miscellaneous receipts.[70]

From its first year of operation the income of the Reclamation Fund from the Mineral Leasing Act outdistanced that from sales of public land, as it has ever since. The sum made available from these and other miscellaneous sources is $2,232,559,545. With additional appropriations from general funds, a grandtotal of $5,019,528,597 was available for construction of reclamation projects in this 63-year period.[71]

SOURCES OF RECLAMATION FUNDS, 1903–1966

Sale of public lands	$177,804,595
Oil leases	753,438,127
Other mineral royalties	37,893,808
Water power licenses	2,370,180
Collections	1,330,421,258

The sharing of revenue derived from public lands with the states in which they are located began, as has been seen, in 1802 with the allocation to Ohio of 3 percent of the net income from lands for roads. Most later states were given 5 percent. In the 20th century, as the public lands were withdrawn from entry for national forests, wildlife refuges, and grazing units, revenue sharing has been used to assist local governments. A first step in revenue sharing was taken in 1906 when Congress provided that 10 percent of the money derived from the sale of timber or use fees should go to the states in which the income originated for schools and roads. In 1908 this was raised to 25 percent.[72] Next came the previously mentioned Mineral Leasing and Water Power Acts which provided that 37 ½ percent of income from coal, oil and gas royalties, and water power leases should be paid to the states where the income originated. In 1916 the revested Oregon & California railroad lands were assigned for administrative purposes to the Department of the Interior which was to pay 25 percent of the net proceeds from them to the State of

[70] Acts of Oct. 2, 1917, Feb. 25 and June 10, 1920, 40 Stat. Part 1, p. 300 and 41 Stat. Part 1, pp. 437, 1063.

[71] Bureau of Reclamation, *Summary Report, 1966*, Parts I, II, and III, pp. 17–25; W. Stull Holt, *The Office of the Chief of Engineers of the Army. Its Non Military History, Activities and Organization* (Baltimore, 1923), p. 136.

[72] Act of June 30, 1906, 34 Stat. Part 1, p. 669, and Act of May 23, 1908, 35 Stat. Part 1, p. 260.

Oregon and 25 percent to the counties in which the lands were located, with 40 percent going into the Reclamation Fund.[73] The share of the county and state governments in Oregon from timber sales on the Oregon & California lands was later raised to 75 percent. The last important allocation of income from public lands to local governments came with the creation of the grazing districts under the Taylor Grazing Act and the distribution of 12 ½ percent of income to the states.[74]

In 1966 the western states received from the federally managed public lands $105,906,238. Oregon was far in the lead in the amount it received, with Washington, Wyoming, and California following.[75]

RECEIPTS OF LEADING STATES UNDER THE MINERAL LEASING ACT OF 1920

State	1966	Total Receipts 1920–1966
Alaska	8,605,378	61,860,378
California	7,049,512	203,638,526
Colorado	8,668,121	157,301,126
Montana	5,696,158	71,375,965
New Mexico	25,067,058	266,266,555
Utah	9,521,296	111,290,096
Wyoming	39,439,811	581,022,165
Total	107,956,095	1,502,034,987

Western Dissatisfaction Not Mollified

That portion of the income from Federal lands which was not distributed to the states in which it originated and which did not flow into the Reclamation Fund was in large measure used to build access roads to timbered areas, improve the carrying capacity of ranges, maintain firefighting staff and equipment, and do research on forestry and grazing problems.

Notwithstanding these facts, many westerners were not satisfied. It rankled with them that the Federal government continued to own and administer the natural resources to such a large extent. At the Western Governors' Conference in 1913 and 1914 a demand was voiced for the cession of all remaining public lands to the states in which they were located. Short of that the conference asked for 5 percent of the remaining lands for the building of roads, 10 percent for irrigation beyond the existing subsidy for that purpose, the donation of power sites, the control of water by the states, and the speedy disposal of the last remaining public lands.[76] Elsewhere in this study it will be seen that the livestock interests at times favored cession of the lands to the states and welcomed President Hoover's proposal, as advanced by the Garfield Commission, that the remaining public lands, being mostly grazing lands, should be given to the states, though without their minerals. The complaint of the public land states that they had not been treated as equals would not be silenced.

One may sum up by saying that until 1953 the older states, whether originally public land states or not, had won a major objective in that they had succeeded in inducing Congress to retain in Federal ownership the national forests, national parks, grazing lands managed by the Bureau of Land Management, and other miscellaneous reserves and after 1933 had greatly reduced the alienation of the public lands. On the other hand, substantial income from the cutting of timber, grazing fees, mineral royalties, and leases of power sites are being used for reclamation development in the West or being paid to the western states for roads and schools.

[73] Act of June 9, 1916, 39 Stat. Part 1, p. 222.

[74] For a list of the laws allocating portions of the proceeds from public land sales and leases and the percentages allocated see Bureau of Land Management, *Public Land Statistics, 1966*, p. 177.

[75] *Public Land Statistics, 1966*, pp. 175, 178; Forest Service, *Report, 1966*, computed from pp. 44 and 56.

[76] *Cong. Record*, 63d Cong., 2d sess., April 20, 1914, pp. 6894–6895.

The Tidelands Issue

The last of the great issues affecting the ownership of the public lands related to the tidelands off the shores of Louisiana, Texas, and California. Federal officials, uncertain about ownership of these tidelands, permitted local licensing of drilling on the California coast as early as 1894 though large oil pools were not tapped until 1921–1936. Not until 1937 was the question of the ownership and management of the tidelands seriously raised by Federal officials. From then until 1953 the right to control the enormously rich oil deposits under tidelands (sometimes said to be worth $200 billion) absorbed the attention of representatives from the three states principally involved, the oil companies which were doing very well with their licenses to drill from local governments, of Federal officials—notably Harold Ickes—who held out for Federal ownership, and of a strong element in Congress which favored releasing the lands to the states.[77] Unlike previous clashes over cession of lands to the states the division of opinion on the tidelands question was not as clearly sectional. There was much support for conveying the tidelands to the states among elements in the East and some opposition in the West. In three cases in 1947 and 1953 the Supreme Court declared that the Federal government "has paramount rights in and power over the tidelands. . . ."[78]

A substantial majority in Congress did not favor Federal management of the tidelands and in 1953 proceeded to "release and relinquish all right, title, and interest of the United States, if any it has," to the tidelands for a distance of 3 miles from low water mark on the Pacific and Atlantic coasts and to 3 marine miles on the Gulf Coast.[79]

In the course of the discussions on the tidelands measure, which took up a vast amount of time and of space in the *Congressional Record*, some things stand out. Conservationists who were opposed to the measure predicted that if voted it would be only the beginning of efforts to convey to the states and through them to private interests the remaining mineral and other reserves. No such action followed. Though the two major parties had taken opposite positions on the measure there was a good deal of crossing the lines on the final vote in both Houses. Conservatively inclined Senators and those still addicted to states' rights arguments were generally favorable to the release to the states, and nationalists and those inclined to be more liberal in their advocacy of the use of Federal powers in behalf of education and social welfare were opposed. Yet there were conservative and liberal members on both sides of the question. Most outstanding was the fact that 12 Senators from western public lands states, including three Republicans whose party was pledged in support of the cession, voted in opposition to cession. Conversely, a number of Senators from old states, who might naturally be expected to line up in favor of national ownership of the rich lands, voted to convey them to the states.[80] Partisan politics, dislike of Federal ownership and the greater restrictions on private development of the resources that it might mean, and possibly the unpopularity of some steps the Department of the Interior had taken in public range, mineral, and forest management, counted heavily in behalf of cession. Clearly, the decision of 1953 was not based on the old division of public land states against non-public-land states.

After the transfer to the states of Federal rights to the mineral resources in the tidelands to the 3-mile limit, Congress provided in the Outer Continental Shelf Act of August

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[77] Marvin A. Harder, "The Tidelands Controversy," *The Municipal University of Wichita Bulletin*, No. 20 (1949), pp. 3–35.

[78] 332 *U.S.*, 22; 339 *U.S.*, 700, 720; 347 *U.S.*, 273.

[79] 67 Stat. 29. *Christian Century*, LXX (April 22, May 6 and 20, 1953), 468, 535, 596.

[80] I have based my analysis mostly on the division in the Senate as shown in the vote of May 5, 1953, *Cong. Record*, 83d Cong., 1st sess., p. 4488.

7, 1953, for the leasing of oil and gas, sulfur, and other mineral rights to the lands in the continental shelf beyond the 3-mile limit. The scramble for concessions in the next 7 years brought into the Treasury $434,731,000 and by 1966 the return from the outer continental shelf had reached $1,138,740,993, with prospects of much more to come.[81]

Nearly a century has passed since the first major withdrawal of public lands for a national park and three-quarters of a century has lapsed since the adoption of the measure authorizing the creation of national forests. Few could have foreseen how far withdrawals for parks and forests would go or that extensive purchase programs would be undertaken to supplement the withdrawals. Many westerners in Congress and outside still are critical about the large proportion of the resources of their states which are held by the Federal government, but find the revenue sharing a major benefit and have never looked with disfavor upon the allocation of funds derived from sale and royalties of public land resources to reclamation development. Many Americans take great pride in the national parks, enjoy the recreational facilities in the national forests, and in large numbers tour the giant dams and reservoirs of the Reclamation Service. National pride in the possession and enjoyment of these facilities seems to be displacing the earlier views.

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[81] Though the outer continental shelf brought more into the Federal Treasury than any other public land source, the Bureau of Land Management gave but slight space to the mapping and leasing of the area. *Public Land Statistics, 1966*, p. 171. The *New York Times* of May 12, 1968, reported that $603,204,284 was bid for drilling rights in the outer continental shelf off the coast of Santa Barbara, California. On May 22, 1968, the *Times* reported sales of leases off the Texas coast amounting to $602 million.

CHAPTER II

Colonial Land Systems

American land law is the product of English royal instructions, common and statutory law, and the practices and customs, as well as laws, of France, Spain, the Netherlands, and Sweden. The colonists from these nations brought their legal institutions and their land laws to the New World and at the same time initiated new policies very different from those in the homelands. They were to create a complex system of land law drawn from the experiences of all of these nations.

Though not the first to establish settlements in the New World, the English, with their greater inclination to emigrate, their relative toleration of minority, religious, and European ethnic groups, and their superior economic and entrepreneurial talents were to have the greatest influence on the law, language, customs, religion, and economic institutions of North America. English trading companies and proprietors were given governing authority and control over land within prescribed boundaries. The laws of the Thirteen Colonies were required to be in harmony with those of England and were subject to critical examination and disallowance.

Conflict and Control over Indian Lands

None of the colonizing nations recognized the Indians individually or collectively as having anything equivalent to a fee simple title to the land. All regarded them as belonging to an inferior cultural group to be used or pushed aside as conditions seemed to warrant. Though ownership was not conceded, the right of aboriginal occupancy came to be acknowledged; in individual Colonies this right was bargained for and purchased by whites, commonly with the approval of the local government. With 13 Colonies exercising jurisdiction over the Indians and their occupancy rights, jurisdictional conflicts were certain to arise because colonial boundaries were indeterminate and some tribes had occupancy claims in more than one Colony. Individual purchases of Indian rights (the alienation of which was rarely understood by the Indians) and squatting by whites on lands which were conceded to be in Indian occupancy, together with the common practice of using liquor in trade with the Indians, produced unrest on the frontier and warfare that involved not just a few settlers but Colonies and whole empires. Measure after measure was adopted by the various Colonies in futile attempts to prevent unauthorized negotiations with Indians for portions of their land and to regulate trade with them. As early as 1634 Massachusetts ordered that no person should buy or attempt to buy land from Indians without leave from the court, and it later voided all purchases of Indian land made without permission.[1] Virginia enacted in March 1657–8 "that no person or persons whatsoever be suffered to intrench or plant upon such places as the said Indians claim or desire until full leave from the Governeur and Council or commissioners for the place. . . ." And in 1705 the House of Burgesses imposed a stiff

[1] Roy Akagi, *The Town Proprietors of the New England Colonies* (Philadelphia, 1924), p. 27.

penalty of 10 shillings an acre on anyone who purchased or leased land from Indians.[2] Other regulations attempted to ban the use of liquor in trade by licensing traders and excluding from the trade those who continued to supply it.

Great Britain came to realize that by leaving control over Indian relations, including negotiations over lands, to the individual Colonies, it had permitted major grievances to develop between the races, and that, if difficulties were to be avoided in the future, it must take from the Colonies some of their power. The Imperial Government therefore appointed William Johnson in 1755 and John Stuart in 1762 as superintendents of departments of Indian affairs for the northern and southern tribes respectively, and gave them authority to protect the Indians from the exactions of traders and land speculators. But the frontier was a huge area, vastly extended by the Treaty of 1763, and too extensive for the two agents, even with their great prestige, to control. The Imperial Government's next step was to issue the Proclamation of 1763, whereby the Indian country, that is, the area west of an arbitrary line drawn down the crest of the Appalachians, was closed to settlement. All negotiations for land therein were forbidden, and settlers who had penetrated there before the issuance of the proclamation were to be removed. The proclamation is instructive concerning the reasons for this prohibition:[3]

> . . . Great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interest, and to the great dissatisfaction of the said Indians; in order, therefore, to prevent such irregularities for the future . . . we do . . . strictly enjoin and require, that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians . . .; but that if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the Governor or commander in chief of our colony respectively within which they shall lie. . . .

Thus Great Britain finally established her basic policy toward the Indians: white settlement was to be barred from the clearly defined Indian country; squatters already there were to be removed; trade with the natives was to be controlled by licensing and by punishing illicit activities; negotiations for surrender or cession of land were to be conducted by government agents; and administration of Indian affairs was to be placed in the hands of the agents appointed by the Board of Trade and subject to its jurisdiction. Subsequently the United States was to adopt a similar policy.

Continued friction over the royal order and the heavy cost of administering the Indian trade led the British to abandon the trade restrictions in 1768 and to turn control back to the Colonies on the understanding that they would enact firmer controls over the trade than they had previously adopted. No such legislation was enacted and conditions drifted from bad to worse. Finally, almost in desperation, Britain made another change: with the Quebec Act of 1774, she stripped the region north of the Ohio and west of the Appalachians from the Colonies whose charters gave them land there and added it to the Colony of Quebec. Because of the nature of the Quebec Government, it was expected that the necessary control over land and Indian matters, which the proclamation had not accomplished, would now be achieved. This decision to resume control over land and Indian affairs came too late, however, and only succeeded in exacerbating relations between the Mother Country and the Colonies.[4]

[2] W. W. Hening, *The Statutes at Large of Virginia* (13 vols.; various places, 1823), I, 467; III, 465.

[3] Henry Steele Commager, *Documents of American History* (New York, 1944), p. 46.

[4] On Indian policy I have relied on Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts 1790–1834* (Cambridge, Mass., 1962); J. P. Kinney, *A Continent Lost—A Civilization Won* (Baltimore, 1937); and Marshall Harris, *Origins of the Land Tenure System in the United States* (Ames, Iowa, 1953).

Even before independence the Continental Congress, recognizing the need for neutralizing or winning the support of the Indians, set in motion its Federal Indian policy. Assuming charge of Indian relations on July 12, 1775, it created three departments, one for the northern, one for the middle, and one for the southern tribes, appointed agents to various tribes, and instructed them "to prevent their taking any part in the present commotions." There was general agreement, despite concern about the rights of individual states, that responsibility for Indian affairs must be in the hands of the central government. The Articles of Confederation left no doubt that Indian affairs in the West were to be controlled by the Government of the Confederation, but were not so clear concerning Indian matters in existing states: "The united states in congress assembled shall also have the sole and exclusive right and power of . . . regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated."[5]

Virginia's Headright System—Its Use and Abuse

Prior to independence, the Thirteen Colonies, and the trading companies and proprietors which had established them, had been making lavish grants to investors and favored persons, and small ones to numerous less important applicants. Except for the proprietary Colonies, land at the outset was not granted for the sake of revenue; the chief interest was in encouraging men of capital to settle people on the land. Free grants therefore were common, though everywhere outside New England quitrents were required.

Except in New England, the headright system was the usual route to land ownership in colonial America. It was designed to encourage men of means to settle workingmen on the land. Virginia's headright system, at the outset, allowed 100 acres for each person transported to the infant Colony and domiciled there for 3 years. After 1618 the headright was 50 acres for each person transplanted and for each free immigrant and member of his family. Titles in fee simple were granted, but an annual quitrent of 5 pence to 12 pence per headright was required, though not commonly paid, in the 17th century. Since an estimated three-fourths of the immigrants to Virginia in the 17th century came as indentured servants, the number of headrights was large, but it was vastly increased by the misuse of the system. Although a strict interpretation of the law should have permitted only one, sometimes three sets of claimants successfully won headrights for the same indentured servant: the shipmaster who transported him, the planter who settled him, and the man himself at the end of his term of service. Furthermore, there developed a practice of forging names of immigrants, or listing slaves. One man added a cipher to 40 in his patent thereby gaining ownership of 400 headrights instead of 40. False surveys also permitted great inflation of grants. Officials tolerated such malpractices and sometimes benefited from them directly.

The abuses of the headright system and the large ownerships they made possible, since headrights were negotiable, reached such a serious point that Edward Randolph, surveyor general of customs in America, reported in 1696 there were no wastelands to be taken up because of the very large grants given to members of the council. He estimated that of the 5 million acres of patented land in Virginia, less than 1 percent had been improved, the balance being held for the expected rise in value.[6]

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[5] Prucha, *American Indian Policy*, pp. 27 ff.; Commager, *Documents*, p. 114.

[6] Beverley W. Bond, *The Quit-Rent System in the American Colonies* (New Haven, Conn., 1919), *passim;* Michael G. Kammen, "Virginia at the Close of the Seventeenth Century," *Virginia Magazine of History and Biography*, 74 (April 1966), 143.

Perhaps the best summary of the faults of the Virginia land system of 1697—one that would do for Virginia throughout the entire colonial period, as well as for most other Colonies—is that prepared for the Board of Trade by John Locke and James Blair:

> The ancient Encouragement of 50 Acres of land per poll designed and ordered by the King upon the first seating of the Country, for all that should come and settle there, has been strangely perverted, and frustrated. 1. by granting the 50 Acres of every Servant to his Master that buys him. 2. by granting 50 acres to every Seaman, and that for every time he adventures himself into the Country, tho' he Never stays, nor settles there. 3. By yet a greater and constant abuse at the Secretaries Office, where the Clerks sell to any man Rights for as much land as he pleases at the rate of five shillings, or less for every right, that is every 50 acres. By this trick the great men of the Country have 20, 25, or 30 thousand Acres of Land in their hands, and there is hardly any left for the poor People to take upp, except they will goe beyond the inhabitants much higher up than the Rivers are navigable, and out of the way of all business.

News that servants could not obtain headrights when freed had a discouraging effect. People who otherwise might have been willing to emigrate were now "not so willing to go there as formerly" because their options were "to hire and pay rent for lands or to go to the utmost bounds of the Colony for land exposed to danger, and often the occasion of war with the Indians."[7]

Virginia attempted to end abuses of the headright system by a comprehensive law of 1705 which provided that only one headright could be gained for the importation of a single person and denied headrights to transients not settled on land. The measure also set a limit of 4,000 acres on the amount of land to be conveyed in any patent and declared that lands not improved within 3 years were to escheat to the Crown. Headrights were to be given for every "Christian," male or female of whatever age.[8]

[7] Kammen, *loc. cit.*, pp. 143, 154–55.
[8] Hening, *Statutes*, III, 304.

Though there is evidence that the British Government also tried to prevent misuse of the granting process in favor of the freedmen and other immigrants, it was quite unsuccessful. Colonial officials and other influential people used every possible device to add to their possessions, and by the time British orders to limit grants were received and supported, it was too late.[9] The English authorities also tried to make sure that indentured servants would receive headrights when their term of service expired, but such requirements were commonly evaded. The freedmen found they had to buy land on long-term credit or rent it. Although Virginia had extensive areas of undeveloped land, tenancy appeared early on the large estates of the group that was emerging as the aristocracy.

In addition to limiting the use of headrights, the Act of 1705 authorized the sale of public lands at 5 shillings for each 50 acres, thus making it possible, despite the 4,000-acre maximum for each patent, for persons with means to gain legitimately what before had been obtained through subterfuge. There followed what Professor Abernethy has called the "era of prodigal grants" in which estates running into the hundreds of thousands of acres were created. Among these large estates were the 179,440-acre holding of William Byrd, the 300,000 acres acquired by Robert "King" Carter, the 100,000-acre grant on the Greenbrier River to John Robinson, the 130,000-acre grant that fell to William Beverley, and the 86,650-acre estate of

[9] Manning C. Voorhis, "Crown Versus Council in the Virginia Land Policy," *William and Mary Quarterly*, 3rd Ser., III (October 1946), 499 f.; Philip Alexander Bruce, *Economic History of Virginia in the Seventeenth Century* (2 vols.; New York, 1896); Curtis Nettels, *Roots of American Civilization* (New York, 1938), *passim;* Richard B. Morris, *Government and Labor in Early America* (New York, 1946), pp. 394 ff.

Governor Alexander Spotswood.[10] In Spotsylvania there were, in 1723, numerous large individual holdings. Twenty-seven individuals and partnerships held 207,753 acres.[11] In addition, extensive tracts had been acquired by the land companies, whose shares were distributed among most of the influential men of the day. The two major Virginia companies were the Ohio Company which was given in 1749 grants of 200,000 and 500,000 acres, and the Loyal Land Company which received a grant of 800,000 acres. Then, in the turbulent days before the American Revolution, a number of companies made up of great names appeared, all scrambling for grants ranging into the millions of acres. Professor Abernethy has traced the involved lobbying efforts of Benjamin Franklin, George Croghan, and Sir William Johnson for the Vandalia, the Indiana, and the Mississippi Land Companies. They were ably aided by English officials who hoped to make fortunes from the spoils.[12]

Greatest of the grants in Virginia and larger than the claim of any land company was the Northern Neck, located between the Potomac and the Rappahannock Rivers. It dated from the early 17th century when Lord Culpepper, one of the members of the Virginia Company, was given this huge tract of 6 million acres. It later fell into the hands of the Fairfax family by marriage.[13]

The rent rolls of the Virginia counties for 1704 and other data showing grants of land indicate that for every large holding there were dozens of small holdings which presumably were given as headrights or were bought from the Colony or from large grantees. As Professor Wertenbaker has said, "it was the small farmer who owned the bulk of the land . . . ." One may suspect that this was more true in 1700 than it was in 1775. By that time, in the richer areas, many small farmers who lacked the resources with which to develop their property had been eliminated and their land consolidated into more efficient farm units.[14] Also, primogeniture and entail, which were brought to Virginia by the earliest colonists, and intermarriage among families with the larger land holdings tended to increase the size of ownerships.[15]

Major Developments in Virginia Land Law—Occupancy, Adverse Possession, Preemption

A Virginia grant or warrant for land entitled the original owner or his assignee to "locate" his right to land on areas not claimed or settled upon by others, and to which the Indian title had been surrendered. Since Virginia did not survey and sectionize its public lands, the landlooker with his warrant for 50 or 100 acres was obliged to search out undeveloped and unclaimed land and to make sure that no speculator's claim covered his

[10] Louis B. Wright and Marion Tinling, *William Byrd. The London Diary, 1717–1721 and Other Writings* (New York, 1958), p. 41; Thomas Perkins Abernethy, *Western Lands and the American Revolution* (New York, 1937), p. 2; Voorhis, *loc. cit.*, pp. 499 ff.; Morris, *op. cit.*, pp. 394 ff.; Marshall Harris, *op. cit.*, p. 208, lists seven other individuals and groups to whom 360,000 acres were patented on condition that they would settle one family for each thousand acres.

The most detailed examination of Virginia's land policy is in Manning C. Voorhis, "The Land Grant Policy of Colonial Virginia, 1607–1774" (Ph.D. dissertation, University of Virginia, 1940). It is especially good on the failure to implement royal instructions to allow indentured servants headrights when they were freed, on the failure of the Colony to enforce "seating" requirements, and for the large number of grants in excess of 5,000 acres which are listed.

[11] Louis de Cognets, Jr., *English Duplicates of Lost Virginia Records* (Princeton, N. J., 1958), p. 114.

[12] Abernethy, *Western Lands and the American Revolution*, pp. 14 ff.

[13] Richard L. Morton, *Colonial Virginia* (2 vols.; Chapel Hill, N. C., 1960), contains much information concerning grants and the efforts of the larger speculators to settle and develop their estates.

[14] Thomas J. Wertenbaker, *Patrician and Plebian in Virginia* (New York, 1959), vii.

[15] Richard B. Morris, *Studies in the History of American Law* (Philadelphia, 1959), pp. 69 ff., discusses primogeniture and entail.

selection before he could afford to begin his improvements. This was not an easy task because a speculator's lands were unimproved and not easy to identify. Unless the settler feared a contest over his claim, it was not necessary for him immediately after selecting his land to file his entry at Williamsburg or Richmond: Virginia conceded squatter's prior rights to land and the settler could feel reasonably secure in his selection. When he had surveyed his land and roughly outlined it by metes and bounds, he was ready to file his entry at the land office. Such a haphazard system, which permitted individuals to run their boundaries as they saw fit so long as they did not encroach on others' possessions, and which rarely left permanent land markers, was bound to cause numerous conflicts over boundaries and overlapping claims. The courts of Virginia and Kentucky were to be cluttered with cases arising from the lack of a system of prior rectangular survey.

In colonial America large and small urban centers such as Boston, Philadelphia, and Charleston developed; but the majority of the population wanted—rather than servants' fare in the towns—to strike out on their own into the "waste and unseated land" outside the populated communities. Land ownership and the development of productive farms were their objectives. Consequently, they scattered widely, frequently disregarding colonial decrees concerning the areas in which settlement was permitted. Nor were they sufficiently careful to avoid starting their improvements on land owned by absentees. Since there were no rectangular surveys with corners carefully marked, the only way private ownership could be determined was by improvements, the barest of which were tomahawk marks. But even such marks did not always deter settlers if there were not some clearing, a small hut, and possibly some fencing. Many large speculative grants bore no evidence of ownership and were subject to escheat in Virginia if not "seated" within 3 years. It is small wonder that, as the settlers looking for land increased in number, some should find after months, or even years, of labor that they were squatting upon land already granted to some man of means in Jamestown or Williamsburg.

As early as 1642, Virginia's courts were hearing "diverse suits . . . to the great trouble and molestation of the whole colony" over the rights of squatters or of persons with land titles, residing on land owned by persons with anterior titles. To meet the situation, the House of Burgesses adopted its first occupancy law to assure that a person who had mistakenly made improvements on land owned by others should be paid by the rightful owner the full value of his improvements, as determined by a local jury. If the value of the improvements exceeded the value of the land without them, the squatter was privileged to buy the land at a value determined by a jury.[16] This was the first act protecting settlers who had innocently improved land owned by others from suffering the loss of their labor. This measure was re-enacted in 1657–8 and in 1661–2[17], and the principle of it was later accepted by Kentucky, Ohio, Illinois, and Missouri, by California in the mid-19th century, and by the Federal government in 1874. The recognition of settler's, including squatter's, rights thus became firmly ingrained in American land law. True, the later laws were less liberal; squatters had to prove color of title to gain the value of their improvements mistakenly placed on land owned by others.[18]

A second major development in Virginia land law, growing out of the "sundry suits, controversies, and debates" which "dayly do arise about claymes," occurred in 1646 when the Legislature enacted an adverse possession law: it provided that a person who had any pretence of title, but had not taken action to

[16] Hening, *Statutes*, I, 260.

[17] Hening, *Statutes*, I, 432 and II, 96.

[18] Paul W. Gates, "Tenants of the Log Cabin," *Mississippi Valley Historical Review*, XLIX (June 1962), 3 ff.

prove his claim within 5 years, was forever barred from any court action.[19] Adverse possession laws and escheat laws providing for forfeiture on failure to seat or improve land within the stipulated time after patent aided somewhat in reducing the amount of undeveloped land held for speculation. But it should be added that the escheat laws were rarely enforced.

Virginia anticipated action later taken by the United States in a somewhat different way, when it tried to draw "able fighting men" to the frontier to protect the older settlements. In 1701 it offered each member of organized groups that would establish themselves on the frontier 200 acres, free of quitrents and all other exactions for a period of 20 years, and exemption from military service other than that ordered by the group.[20] A number of 10,000-acre grants on the frontier were given in the hope that well-established settlements would be achieved.

Between 1642 and 1779, landlookers moving west, establishing themselves on likely land, and later making the survey necessary for patent under their military bounty rights, might still find that others had preceded them in gaining ownership. To protect such actual settlers there developed a preferential or preemption right in favor of the improver of the land. The term "preemption" first appears in Virginia's Land Act of 1779, which gave persons who had settled on the western waters before January 1, 1778, and had "built any house or hut, or made other improvements thereon," the right to as much as 1,000 acres including their improvements. Persons settling on land after January 1, 1778, could enter or preempt up to 400 acres. In each case 10 shillings was to be paid for every 100 acres, but credit of 12 months was given. Notice of the preemption claim protected the settler who had 10 months in which to file his final entry.[21] In Federal land policy, preemption was subsequently to have a long history.

While showing their concern for safeguarding squatters' rights and allowing generous grants for a small fee, the members of the Virginia Legislature were also mindful of the need for maintaining good relations with the Indians. Accordingly, in 1779 they banned all settlement north of the Ohio River and authorized the use of military force to eject intruders.[22] The United States was to follow this policy also, though neither Virginia nor the United States found effective ways of enforcing it.

Land Policies in Colonial North Carolina

Other southern Colonies followed in general the policies of Virginia. In North Carolina eight persons, as proprietors, were given a region within prescribed boundaries extending from the Atlantic to the "South Sea on the West Parte." The proprietors were motivated by the desire both to develop the land and to draw large revenues from it. They granted headrights, usually of 50 acres, for bringing in either white or black people over 16 years of age. When servants became free they were to be given small grants, 50 acres for men and 30 acres for women. Freemen coming to North Carolina were given 100 acres. Land was offered at £10 per 1,000 acres, with a yearly quitrent of 5 shillings; in 1696 the price was raised to £20. For land 200 miles or more from the coast, the price was somewhat lower. The governor and members of the council made the grants, exacted substantial fees for their services, and became major beneficiaries of the land system. To prevent an undue concentration of land in the hands of a few owners, grantees were required to improve their land; but it is likely that natural geographic conditions

[19] Hening, *Statutes*, I, 331, 451. The law was reenacted in 1657–58.

[20] Hening, *Statutes*, III, 204 ff; Harris, *Origins of the Land Tenure System*, p. 261.

[21] Hening, *Statutes*, X, 40, 179.

[22] Hening, *Statutes*, X, 161.

were more responsible for the fact that small farms, rather than great plantations, became characteristic of this Colony.

In 1729, seven of the eight proprietors surrendered their rights in North Carolina to the Crown for a consideration. Lord Granville retained his, which included nearly half of the Colony and contained the greater part of its population. For the balance of the colonial era, the Granville family owned and administered this huge area as private property. A recent English historian has written: "The proprietorship was an incubus, and at times a festering sore on the body economic and politic of North Carolina. For many years settlers . . . were subject to extortion, exaction, and oppression by Granville's agents who enriched themselves by giving unlawful grants of land for which they exacted exhorbitant fees . . . ." The record of the Granville administrators is in sharp contrast with the benevolent policy of the Fairfax family on its lands in the Northern Neck of Virginia.[23]

In addition to the Granville estate, other large tracts were granted. Henry McCulloch and associates received two grants of 132,000 acres and a third of 1,250,000 acres on the upper part of the Pee Dee, Cape Fear, and Neuse Rivers. Of this latter grant, 400,000 acres were acquired by John Selwyn and Arthur Dobbs, later Governor of North Carolina. Settlement of one white person on every 200 acres and a quitrent of 4 shillings per 100 acres after 10 years were required. A steady stream of emigrants was leaving Northern Ireland for America; Dobbs succeeded in directing many of them to his lands, a task which was doubtless furthered by his appointment as Governor in 1753. The biographer of the North Carolina Governor has summarized the results of the disorganized and carelessly maintained land system of the Colony: "Owing to the scramble for colonial grants and the fact that titles were not properly registered, land in the colony had been granted over and over again in different grantees, and much confusion existed regarding boundaries and the fixing of quitrents; many blank patents were also issued which only added to the confusion."[24]

We may see something of the results of these land policies from the statistical studies of real and personal property ownership in North Carolina made by two enterprising students on the basis of tax and assessment lists of the various counties for about 1780. Although the records are not complete they are sufficiently extensive to provide a useful picture of landholding as of 1780. The authors found that the average size of holdings ranged from 166 acres in Pasquotank County in the Albemarle Sound area to 933 acres in New Hanover County on the Cape Fear River. Of 13,512 holdings of land in the state, 839 were less than 51 acres; 3,137 were less than 101 acres; 6,430 were less than 201 acres. At the other extreme, 1,002 persons held more than 1,001 acres each; 57 held more than 5,001 acres; and 18 owned more than 10,001 acres. Unfortunately, the total acreage thus held is not available. Nor are like data available for other Colonies with which those of North Carolina could be compared.[25] The chief weakness of the North Carolina data lies in the fact that many ownerships were spread over more than one county; the investigators were not able to

[23] Albert L. Bramlett, "North Carolina's Western Lands" (Ph.D. dissertation, University of North Carolina, 1928); Desmond Clarke, *Arthur Dobbs, Esquire, 1689–1765* (Chapel Hill, N. C., 1957), pp. 155 ff.

[24] Clarke, *Arthur Dobbs*, pp. 71–73. Harry Roy Merrens in *Colonial North Carolina in the Eighteenth Century* (Chapel Hill, N. C., 1964), pp. 26 ff., offers some other information on large holdings in the state. Edward Moseley and Thomas Pollock, he finds, left estates containing 25,000 and 50,000 acres respectively in the first half of the 18th century, and the Moore family held 83,000 acres on the Cape Fear River.

[25] Francis Grave Morris and Phyllis Mary Morris, "Economic Conditions in North Carolina about 1780, Part 1, Landholding," *North Carolina Historical Review*, XVI (April 1939), 107 ff.

devise procedures to record ownerships on this basis.

Land Sales and Quitrents in Proprietary Colonies of Pennsylvania and Maryland

Pennsylvania was one of the two Colonies that retained its proprietary government until the American Revolution. The proprietor had the same full rights in land that were held by the Crown in the Royal Colonies, including the right to make grants and to exact quitrents. William Penn planned his Colony as a refuge for politically and religiously oppressed peoples, but at the same time he and his descendants expected to draw a substantial income from the Colony. Manors reserved to the Penns were to be developed by tenants from whom it was expected there would be considerable income. The greater source of income, however, came from the sale of land at £5 per 100 acres, as a rule, before 1713. Some lands in great demand sold for as high as £13 per 100 acres. After 1713 the price was commonly £10 per 100 acres with a quitrent of 2 shillings. The price was high compared with the cost of land in Virginia, and many immigrants soon moved from Pennsylvania to Virginia. Credit was granted by the Penns and many settlers took years before clearing up their obligations and getting title. Except for grants to friends of the proprietor, free lands were not part of the system. With the coming of tens of thousands of Scotch-Irish and Germans—many without resources to buy and compelled by circumstances to move out to the frontier of the Colony—squatting became so common that it was estimated in 1726, doubtless with exaggeration, that as many as 100,000 immigrants had taken up and were improving land to which they had no title. For years these frontier squatters continued to be a thorn in the flesh of the proprietor, the governors, and the legislature. In 1755, with the reluctant approval of the proprietor, Pennsylvania did authorize free grants west of the mountains with exemption from quitrents for 15 years in the hope of attracting frontiersmen who would strengthen the Colony's hold on that section.[26]

Examination of the tax lists of Pennsylvania counties just before and during the Revolution, as published in *The Pennsylvania Archives*, Third Series (Vols. XI–XIX), shows that by far the larger part of the improved land was in the hands of farmers operating 100 to 300 acres. With the exception of Northumberland County, where there were several large holdings running from 1,000 to 10,000 acres, small- and medium-landed proprietorships were successfully established.

In Maryland the proprietor showed the same eagerness for income from the land as the Penns did. Land acquired as a headright, as a manor, or as the result of a sale did not carry a fee simple title but was subject to quitrents, escheat, and alienation fines. For most of the colonial period, sales were made at 40 shillings per 100 acres with a quitrent of 4 shillings per 100 acres. Early grants were large and only improved to a limited extent. Consequently, the quitrents, which were much heavier than those of surrounding Colonies, tended to encourage division and smaller units of farming. Yet large estates did exist. Richard Bennett's 30 plantations (partly in Virginia), Edward Lloyd's 36,000 acres, James Brooks' 22,000 acres, Charles Carroll's 40,000 acres, and the Calvert family's 100,000 acres together constituted a considerable part of the small Colony.

Grants in the form of warrants did not have to be located on land immediately and were not subject to quitrents until they were located. For speculative purposes it was found useful not to locate, at least until there was danger of the better land being taken up.

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[26] William Robert Shepherd, *History of Proprietary Government in Pennsylvania* (New York, 1896), pp. 34, 52, *passim*. Elizabeth K. Henderson examines the methods used by speculators or "large landholders" to evade the 300-acre maximum for land entries in the Act of 1765 in "The Northwestern Lands of Pennsylvania, 1790–1812," *Pennsylvania Magazine of History and Biography*, LX (April 1936), 131–60.

Because of the high quitrents, owners were careful in arranging their surveys to eliminate gullies, swamps, and other undesirable land, preferring level, well-drained land close to streams. The result was that boundaries commonly took fantastic shapes, although the regulations attempted to require that they be in rectangular form. "Stringing" was the expression employed to denote the efforts of grantees to exclude poor lands. Because of the absence of prior rectangular surveys, the boundaries mentioned in the warrants were vague and, when run out, could be made to include much more than the acreage granted. The surpluses thus acquired reduced the proprietor's income both from sales and from quitrents. Efforts to compel grantees to surrender their surplus land and to take new patents for the exact amount intended were not altogether successful.

Naturally, in Maryland the relatively high quitrents became a source of friction between the proprietor's representatives and the people. In most Colonies the complaint was that the local land system tended to drive immigrants to other areas. This charge was made in Maryland, although the density of its population as shown by the census of 1790 suggests that it suffered little, if at all, from this factor.[27]

Large Grants of New York

New York's land system, if it can be called that, was in sharp contrast to that of Virginia and the southern Colonies, as well as to that of the New England Colonies. In New York, revenue and even promotion of settlement were of minor importance. Instead, the emphasis was on large grants to members of the governor's council and other favorite individuals and families, with all settlement or improvement requirements quite generally disregarded. Only one of the Dutch patroonships—Rensselaerswyck—with its manorial tenures, its hundreds of tenants, and its three-quarters of a million acres survived the Revolution. In its long and turbulent career, it became the object of agrarian attacks and the cause of a number of political and constitutional crises in New York State. After displacing the Dutch in control of New York, the English were not far behind them in making lavish grants on Long Island, up the Hudson, and later along the Mohawk, the Schoharie, and far north to the St. Lawrence. Among these grants were the Philipsburgh manor of 156,000 acres; the Highland patent of 205,000 acres; the Livingston manor of 160,000 acres; the Kayeraderosseras patent of 400,000 acres; the Hardenburgh patent of 1 million acres; and the Evans patent of 512,000 acres, which was forfeited.[28] These were only the beginning.

The land business became a profitable institution in New York, not to the Duke of York or to the Crown, but to the officers of the Colony for whom the land fees were a rich source of income. It was to the officers' advantage to speed the process of granting lands and to make the grants as large as possible because the fees were in proportion to size. The governor and members of his council also could insist on being included in many of the larger requests for grants. In this way, George Clarke was able to accumulate most of his 117,662 acres.[29]

The indefinite boundaries given in these early New York patents enabled the grantees to stretch their claims by many thousands of acres. Such vagueness naturally led here, as in Virginia and other southern Colonies, to a great deal of litigation. A contemporary who was looking for land for a friend in 1764 in an area where Indians still menaced and speculators were grabbing off everything, wrote that he was fearful lest "the One take your Scalp, the other your Estate in Law

[27] Useful for Maryland are Clarence P. Gould, *The Land System in Maryland, 1720–1765* (Baltimore, 1913); and Charles A. Barker, *The Background of the Revolution in Maryland* (New Haven, Conn., 1940).

[28] Ruth L. Higgins, *Expansion in New York* (Columbus, Ohio, 1931), *passim.*

[29] Edith M. Fox, *Land Speculation in the Mohawk Country* (Ithaca, N. Y., 1949), *passim.*

Suits." Efforts were made by the Crown to limit grants to one or two thousand acres but all such restrictions as well as those requiring improvement had little effect.[30]

Some of the great landlords of New York devoted their efforts to settling upon their estates men who would either buy small tracts or agree to pay rent after a few years. George Clarke and Sir William Johnson and, later, William Cooper were among the more successful in the 18th century in thus developing large estates. But in spite of all such promotional efforts, New York, where no headrights or free grants were offered, fell far behind other Colonies in attracting and retaining population. Its splendid route into the interior was blocked until 1785 by the Iroquois Confederacy, and much of its richly promising land was held by speculators who would only sell at high prices or on quitrents. In 1790, at the time of the first national census, New York was far behind Pennsylvania (founded many years later than New York), Massachusetts, Virginia, and North Carolina in population and economic growth.

Independence made no great change in land management in New York. Land continued to be disposed of in large blocks: 3,670,715 acres were sold to Alexander Macomb in 1792 for 8 pence an acre, and 800,000 acres were sold to Totten and Crossfield. Other speculative purchases were the Scriba patent of 490,000 acres; the Noble-borough patent of 40,960 acres; the Rosenburgh patent of 48,000 acres; and the Adgate patent of 43,907 acres.

Most spectacular of all, though not made by New York, was the sale by Massachusetts of its western New York lands. The conflicting claims of Massachusetts and New York had been resolved by the drawing of the famous Preemption Line through western New York, whereby Massachusetts was given the ownership of the land west of the line and New York was given the sovereignty. Phelps and Gorham bought the entire tract of 4 to 5 million acres from Massachusetts but were unable to complete the purchase. It was then taken up by Robert Morris who sold 3 million acres to the Holland Land Company. Paul Evans' fine study relates the difficult problems of management with which this company struggled for years before the investors could recover even the original investment with simple interest.[31]

This emphasis upon very large grants in New York, which were only equalled or exceeded by the Fairfax estate in Virginia and the Granville estate in North Carolina, must not obscure the fact that many small grants of 200 to 2,000 acres were made. Furthermore, some of the large grants, like that to Alexander Macomb or to Totten and Crossfield, were really made to partnerships consisting of a dozen or more investors. As soon as patented, the land was quickly divided among the investors, many of the partners being anxious to start sales before taxes and interest jeopardized their equity. The large grants were easy to handle for a government that was reluctant to set up administrative machinery to retail the lands in small tracts, but it doubtless increased the cost of land to the actual farm maker.[32]

Township Grants of New England

The New England land system differed markedly from that of the middle and southern Colonies in that, from the outset, the three leading Colonies of Massachusetts, Connecticut, and Rhode Island had control

[30] Alexander C. Flick (ed.), *History of the State of New York* (10 vols.; New York, 1933), III, 154. Very useful for the large grants in New York is David M. Ellis, *Landlords and Farmers in the Hudson–Mohawk Region, 1790–1850* (Ithaca, N. Y., 1946).

[31] Paul D. Evans, *The Holland Land Company* (Buffalo, N. Y., 1924), *passim.*

[32] For the many instances of direct grants of 200 acres or more see *Calendar of Land Papers*, prepared by the Office of the Secretary of State, New York (Albany, 1864), and the "Map Showing the Location of the Original Land Grants Patents and Purchases," in J. R. Bien, *Atlas of the State of New York* (New York, 1895).

of the granting process, retained no right of quitrents, made grants of townships to groups of proprietors, and reserved lots for the minister, the church, and the school. Most characteristic and unique was the group grant to proprietors. These persons, six to perhaps 80 in number, were men of affairs, known and acceptable to the legislative assembly. In the 17th century the proprietors generally planned to move to the new community they were creating and to identify themselves with it. As a group having the full ownership of an area, 6 miles square in the later years, they promoted development by building roads, offering free grants to the first settlers and to those who would construct sawmills and gristmills, and gave bounties for the production of wheat, rye, and corn. After making free grants to aid in getting the community started and allotting land to those proprietors who moved to and developed homes in the new community, the proprietors held the balance of the land or commons for future sales. Conflicts developed between the proprietors who had rights in the commons and later settlers who had no such rights. The townships were surveyed in advance of settlement and divided into lots or sections with in-lots, or residential lots, and out-lots, or land for cultivation, pasture, and woods. The lots or sections were numbered in a fairly regular plan from the outset and took on some of the aspects of the Federal township of a later day.[33]

The township method of granting land kept the control over settlement and settlers in the hands of the legislature, permitted a more compact advance into the frontier, and was a factor contributing to more systematic and intensive utilization of the land. Individual squatters and speculators who traveled widely looking for choice land were not to be found.

In the early days this system of township grants to a more or less homogeneous group of proprietors—with similar backgrounds, a common religion, a concern for each other's welfare, and a willingness to exchange labor and share the use of draft animals and tools—resulted in a very different type of community from that emerging on the frontier of Virginia or North Carolina. Reservations or allotments for the church, the minister, and the school assured residents that religious and educational opportunities would be available fairly soon after the new community was established. The church was sometimes built by the proprietors as an added inducement to settlement, and the minister might be enticed by the promise of a lot of 160 acres. School lots were an indication of the high place common schools held in the minds of New England town proprietors.

The British Board of Trade, impressed by the success of Massachusetts and New Hampshire in establishing frontier towns for protection against the Indians, ordered South Carolina and Nova Scotia to settle groups in frontier townships of 20,000 acres and to grant heads of families settling in such communities 50 acres for each member.[34] Virginia, Pennsylvania, Maryland, New York, and Georgia also experimented with colonizing hardy settlers on the frontier and made efforts to eliminate speculation in the generous grants given for this purpose, but the colonists always seemed to find means of evading the restrictions.[35]

In the years just before and after the Revolution, speculation in township grants and proprietors' rights in Vermont ran riot. The overlapping claims of Massachusetts, New Hampshire, and New York led to duplication of grants, bitter struggles between settlers and proprietors claiming under grants

[33] John W. Reps, *The Making of Urban America* (Princeton, N. J., 1965), pp. 116 ff., shows a number of New England town plats. Some of the numerous town histories of New England include maps and plats showing the original division of the towns.

[34] Leonard W. Labaree, *Royal Instructions to British Colonial Governors, 1670–1776* (2 vols.; New York, 1935), II, 542.

[35] Harris, *op. cit.*, pp. 261–62.

from different Colonies, and ineffective efforts to iron out the difficulties. The King's decision in 1764, that all the disputed territory west of the Connecticut River belong to New York, was not acceptable to those claiming title under New Hampshire. Ethan and Ira Allen, leaders of the Revolutionary party, raised the cry of absentee ownership against the New York grantees, even though the brothers themselves were among the greatest speculators of the time. The Revolution enabled the radicals to have the loyalists' estates confiscated and to question the legality of New York grants. What is surprising is the size of the Vermont properties, some of which included 13,000 acres and even 56,000 acres. The Onion River Land Company, the principal device through which the Allen brothers conducted their speculations, seems to have held 77,622 acres at the outbreak of the Revolution.[36]

Massachusetts, which had a huge quantity of land in its province of Maine, granted townships to numerous proprietors and at the same time began selling land in large tracts. Perhaps to guard against the worst effects of speculation and absentee ownership, the Bay State grants of six townships in Maine in 1762 required the grantees to survey their tracts, to settle 60 Protestant families in each township within 6 years, to build 60 houses at least 18 feet square each, to prepare 300 acres of land for cultivation, to erect a meeting house, and to settle a minister. Four lots were to be reserved in each township: one lot each for the parsonage, for the first minister, for Harvard College, and for a public school.[37]

In the 18th century the township grants of Massachusetts, Connecticut, and New Hampshire became the objects of extensive speculation. No longer was the proprietor committed to the new community to the extent of moving to it and working to aid its growth. Instead, he was a speculator who might have shares in as many as 50 towns. His proprietor's rights were hawked about for anyone who wanted to invest. The disparate interests of proprietors and settlers became marked, producing frequent appeals to the courts and to the legislature over such questions as the proprietors' rights in the commons, their liability to taxation, and their policy of withholding land from development for speculation.[38]

Roy Akagi has shown that not only was there an increasing tendency for small capitalists to speculate in proprietor's rights, but also that Massachusetts and Connecticut were caught up in the desire to make money from land and placed their remaining townships on the market. Connecticut sold individual proprietor's rights in the townships while Massachusetts offered full townships. Credit was allowed.[39]

Massachusetts has been pictured as trying, in the late 18th century, to compromise between two policies—selling its Maine land in large blocks to speculators and, at the same time, recognizing the occupancy rights of squatters in the improvements they had put on land, but refusing them preemption. Large buyers of its Maine land were required to colonize 40 persons in each township acquired, but extensions were granted and commutation to cash payment or road work was permitted. By favoring speculators, Massachusetts antagonized pioneer settlers who went west, not north, in droves; and by protecting squatters, it repelled investors.[40]

It might be expected that the New England Colonies, which were the most poorly endowed by nature for agriculture, would prove

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[36] Chilton Williamson, *Vermont in Quandary: 1763–1825* (Montpelier, Vt., 1949), pp. 30 ff.

[37] W. D. Williamson, *History of the State of Maine* (2 vols.; Hallowell, Maine, 1832), II, 361.

[38] James Truslow Adams, *Revolutionary New England* (Boston, 1923), p. 263, shows that Ezra Stiles, one of New England's most learned divines, owned shares in many townships, of which 10 are named.

[39] Akagi, *Town Proprietors, passim;* Florence M. Woodward, *The Town Proprietors in Vermont* (New York, 1936).

[40] Oscar and Mary Flug Handlin, *Commonwealth. A Study of the Role of Government in the American Economy: Massachusetts, 1774–1861* (New York, 1947), pp. 87 ff.

the least attractive to emigrants. This was not the case, however. From the outset these Colonies, with 19 percent of the land in the Original States, had the densest population and throughout the colonial period they maintained their lead. Various geographic, economic, and religious factors have to be taken into account in explaining the steady growth of New England. Not the least in importance was her land policy. Her township grants, given free to proprietors, made for compact, orderly settlement accompanied by the growth of towns that provided a market for the surplus products of her farms. Though speculation in proprietors' rights became common in the 18th century and some land was sold, on the whole the New England land system encouraged small family-owned farms, few large estates, and little tenancy.

Not to be neglected are the grants for higher education. In 1619 the Virginia Company had set aside 10,000 acres on the James River for a university and sent servants as tenants to develop the property and produce revenue. One-tenth of the land was to be used to aid in the conversion of infidels. Later, King William and Queen Mary gave 20,000 acres for the institution which was named after them and the Colony voted to allot one-sixth of the surveyors' fees to it. In New England, Harvard College received an endowment of 3,300 acres from Massachusetts. New Hampshire gave Dartmouth College 40,960 acres and Pennsylvania, after 1786, made a series of grants of 5,000 to 10,000 acres to Dickinson College, Franklin College, and Reading Academy.[41]

[41] Joseph Shafer, "The Origins of the System of Land Grants for Education," *Bulletin of the University of Wisconsin, History Series*, I (Madison, Wis., 1908), 5 ff.; Akagi, *op. cit.*, p. 208; Benjamin H. Hibbard, *History of the Public Land Policies* (New York, 1924), p. 308; Harris, *op. cit.*, pp. 270–71; Matthias Nordberg Orfield, *Federal Land Grants to the States with Special Reference to Minnesota* (*University of Minnesota Studies in the Social Sciences*, No. 2; Minneapolis, Minn., 1915), pp. 7–21; Hening, *Statutes*, XI, 310.

Period of Diverse Policies

Characteristic features of the colonial land policies were: proprietors' township grants in New England; large grants to favorites to be developed by tenants in New York; sales in large and small tracts in Pennsylvania; and headrights that permitted large accumulations of land in the South. Prescribed limitations on acreage and early requirements of "seating" or settlement were disregarded, resulting in extensive, slightly developed estates and a thin, widely dispersed population. At the same time, there were many small holdings, partly the result of the fragmentation of speculative holdings and partly the result of headrights. Only in the proprietary Colonies was there any reluctance to dispose of land as fast as there was a demand for it. Some historians who have speculated about the reasons why the United States disposed of its landed resources with a lavish hand seem unaware of the fact that, during the century and a half preceding 1776, colonial administrators seemed bent on getting land into private ownership as speedily as possible. Residents of New York, Pennsylvania, and Maryland were certain that the economic development of these states had been retarded by the land policies of the proprietors and governing authorities. Thousands of land-hungry Scotch–Irish immigrants who might have settled in these states moved down the valley of Virginia to North Carolina and later to Kentucky and Tennessee, thereby pushing the frontier westward into a great bulge in this middle region. Behind them were the courts of Virginia, cluttered with land cases, ejectment suits, and mortgage foreclosures, the product of speculative holdings and of overlapping grants. Dispersion of the population produced frequent Indian uprisings and massacres, especially where the title of aborigines had not been secured before the whites penetrated into their grounds. Many settlers on the frontier were practically isolated, out of touch with settled communities,

forced to live at a subsistence level, and deprived of churches and schools.

Nothing contributed more to raising the cost of land to actual settlers and to litigation than the system of indiscriminate location and subsequent survey which had characterized Virginia from the beginning and was followed elsewhere in the southern Colonies. Occupancy, adverse possession, escheat, and preemption laws all aided or could aid farm makers distressed by title controversies, but what was most needed was a system of prior survey before selection of or settlement on land, and careful recording of titles by legal description. The British Privy Council tried, belatedly, in 1774, to bring about such a reform by instructions sent to the Governors of Virginia, New York, New Hampshire, North Carolina, South Carolina, and Georgia. Surveys were ordered to be made of land not granted or otherwise disposed of. The land was to be divided into lots of not less than a hundred or more than a thousand acres according "to the nature and situation of the districts so to be surveyed." A map was to be prepared showing the surveyed areas "with the several lots marked and numbered" and accompanied with a description of the "nature and advantages . . . of each particular lot." The map was to be posted in the office of the secretary of the Colony, and printed advertisements were to be distributed in the Colony and in neighboring Colonies "containing notice of the time and place of sale so to be . . . as full and explicit as may be, as well in respect to the number and contents of the lots to be sold, as the terms and conditions on which they are to be put up to sale and the general situation of the lands and the advantages and conveniency thereof." Four months later, public sales were to be held and the land sold to the highest bidders. A minimum price of not less than 6 pence per acre was to be established for each lot "according to the quality and condition thereof . . . ."[42]

[42] Labaree, *op. cit.*, II, 535.

This royal instruction of 1774 was part of the effort of the British Government to systematize and make more orderly its colonial administration, as well as to tap a promising source of revenue. It hit hard, however, at cherished policies that local authorities were not prepared to surrender, such as the practice of squatting, the recognition of squatter's and occupant's rights, and the right, in New York, of the colonial administration to make grants of whatever size to whomsoever it wished. The grants, in which administrators invariably had a part, and the numerous fees paid in the process of patenting constituted patronage of great value which the colonial officials were reluctant to lose.[43]

Aside from the proprietary Colonies and the Fairfax lands in Virginia, land sales for revenue were not a major feature of colonial land policy. Yet we have seen that as early as 1701 Virginia resorted to sales, probably to accommodate worthy persons who wanted land but had no headrights, and to diminish the abuses associated with headrights rather than for revenue. In the 18th century the need for revenue because of Indian wars and the example set by the Penn family may account for the increasing emphasis on sales. By 1775 most Colonies, even Massachusetts and Connecticut, were selling land.[44] The instructions of the British Board of Trade of 1774 were not, then, a major innovation though the instructions requiring prior survey and the elimination of free grants to favorites were new. The Revolution prevented action under these orders. The new states used public auctions to dispose of the confiscated estates of Tories. Thereafter, in state land administration, the auction was one of the methods of providing for sales of public lands.

However, free lands continued to be obtainable. New England retained its system of

[43] Fox, *op. cit.*, *passim.*

[44] James Truslow Adams, *Revolutionary New England*, p. 262, shows that Massachusetts in 1762 sold at auction nine townships in its west at from $.33 to $.70 an acre.

free township grants to proprietors who in turn gave shares and lots liberally to attract settlers. Pennsylvania in 1755 offered free grants with exemption from quitrents for 15 years to persons settling west of the Alleghenies. Before the close of the Revolution, Virginia and North Carolina were offering, virtually free, 400- and 640-acre grants in their western territory. Massachusetts was granting individuals 100 acres in Maine upon condition of clearing 16 acres in 4 years. Thus at the time of the Revolution, the Colonies were selling land at the same time as they were granting it free to encourage settlement on the outer edge of the frontier.[45]

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[45] Amelia C. Ford, *Colonial Precedents of our National Land System* (Madison, Wis., 1910), pp. 83 ff.

CHAPTER III

State Cessions of Western Land Claims

Great Britain's grants of land to the London or Plymouth Companies and, in fact, to most of the Thirteen Colonies, had been loosely described and bounded in language that was far from precise. Considering the vagueness of geographical knowledge of the time, this is understandable. As a result, the numerous overlapping claims of the Colonies created much trouble for the Mother Country and threatened to cause outright warfare in America. Best known of these conflicts were those over the boundaries separating (1) Maryland from Pennsylvania, (2) Maryland from Virginia, (3) Massachusetts from New Hampshire and New York, (4) New Hampshire from New York, (5) New York from Connecticut, and (6) Connecticut from Pennsylvania. These conflicts gave rise to a dispute between Virginia and Maryland over the navigation of the Potomac, caused the Mason-Dixon line to be surveyed, brought about the long squabble over the New Hampshire grants, and the drawing of the famous Preemption Line through western New York.

Land Claims of the Original States

The original grants to Massachusetts, Connecticut, New York, Virginia, North and South Carolina, and Georgia gave them land between definite parallels of latitude extending "from sea to sea" or "from the Atlantick and Westerne Sea and Ocean of the Easte Parte, to the South Sea on the West Parte."[1] All these sea-to-sea grants were cut off at the Mississippi in 1763 by Great Britain's acquiescence in Spanish ownership of the trans-Mississippi country, but there remained a huge area west of the Appalachians in which seven of the Original Colonies had claims. Great Britain further restricted these claims by the Quebec Act of 1774 which transferred the territory north of the Ohio to the Province of Quebec, thereby depriving Massachusetts, Connecticut, New York, and Virginia of an estimated 176,725,760 acres.[2]

George Rogers Clark's defeat of the British at Vincennes and Kaskaskia made it possible for the Americans to claim and win the ownership of the territory between the Ohio River and the Great Lakes at the peace of 1783. It also strengthened Virginia's claim to the territory, which had been won by Virginia's troops maintained by Virginia's funds. With the Northwest Territory, as we may now call it, and the region now constituting Kentucky and West Virginia, Virginia—already the largest of all the states—possessed an immense area in which to colonize its rapidly increasing population. This western territory could be divided into eight to 12 daughter states which might be satellites of Virginia and assure her dominance in the affairs of the new Nation.

At the conclusion of the war, Georgia was still but slightly developed, though its western

[1] Henry Steele Commager, *Documents of American History* (New York, 1944), pp. 11, 17.

[2] I arrived at this figure by deducting the acreage of the Georgia cession as given in Thomas Donaldson, *The Public Domain* (Washington, 1884), p. 87, from the acreage of all the state cessions in Bureau of Land Management, U. S. Department of the Interior, *Public Land Statistics, 1965*, p. 4.

land claims in present Alabama and Mississippi made it the second largest state, with an area in excess of 94 million acres. This was 19 times the size of New Jersey or 15 times that of Maryland. North Carolina, whose western lands extended to the Mississippi and constituted present Tennessee, held 57,872,000 acres, or an area nearly equal to today's New York and Pennsylvania combined. South Carolina's claim to western lands was much smaller, being 3,136,000 acres. The two western land claims of Massachusetts and Connecticut together contained 25,600,000 acres, nearly three times the size of those states today. New York claimed a tract of 202,000 acres—the Erie Triangle—which, when ceded to the United States, was to be sold to Pennsylvania. It also had a vague claim beyond in the Ohio country. It was feared that these western lands, when settled, would give to the states owning them greater political influence in the affairs of the Nation than states lacking any such supply of vacant land could hope to have. The states owning the lands would also have a major source of income in which the small states—Maryland, Delaware, New Jersey, Rhode Island, and New Hampshire —would have no share.

Western Lands—Common Property?

Maryland, the most populous of the states with no western land claims, was naturally disturbed at the contrast between its small area and that of neighboring Virginia. At the time, the two states were bickering over whether the boundary of Virginia extended to the north bank of the Potomac or to the center of the main channel. As early as 1776, Maryland tried to prod Virginia and other states into ceding their western lands, arguing that the "Back lands" should be held as "common property" and the income from them used to provide funds for the support of the Revolutionary War. In an instruction to its delegates in the Continental Congress, the Maryland Legislature in 1778 spoke of states that were "ambitiously grasping at territories to which . . . they have not the least shadow of exclusive right," and characterized their claim as "so extravagant, so repugnant to every principle of justice, so incompatible with the general welfare of all the states" that it may "urge them on to add oppression to injustice." Maryland argued that the territory could only be "wrested from the common enemy by the blood and treasure of the thirteen states" and therefore "should be considered as a common property. . . ."[3] Maryland also was anxious to have the lands made available to the Union of the States so that it could fulfill its bounty obligations to soldiers and officers; she feared that otherwise she would be bankrupted by having to buy land to satisfy warrants the Congress could not satisfy. So strong was the feeling of the Maryland men that the western lands should be ceded to the United States that the state refused to ratify the Articles of Confederation until steps were taken towards cession.

New Jersey contended that the Ohio country had been lost to Virginia, Massachusetts, and Connecticut by the Proclamation of 1763 and the Quebec Act of 1774 and had been recovered by George Rogers Clark acting for the United States. The New Jersey Legislature declared, "It was the confident expectation of this state that the benefits derived from a successful contest, were to be general and proportionate, and that the property of the common enemy, falling in consequence of a prosperous issue of the war, would belong to the United States, and be appropriated for their use."[4]

In reply to attacks by Maryland and New Jersey, the Virginia Legislature in a remonstrance declared that the United States had no right to western lands save through the claim of the individual states, and it denied

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[3] Worthington C. Ford, *et al.* (eds.), *Journals of the Continental Congress* (34 vols., Washington, 1904–1937), V, 505n; XIV, 619–22. Note the emphasis upon the lands as common property of all the states.

[4] Ford, *Journals*, June 25, 1778, XI, 648–51.

the right of Congress to deal with the lands or the land companies that claimed them. Many prominent men of Virginia, Maryland, and Pennsylvania had invested in these land companies. It has been maintained that it was the conflicting interests of these speculators that motivated the policy of the states in the Continental Congress rather than the fear of aggression by the large states against the small states. Perhaps it was as much intercompany rivalry as interstate rivalry that motivated them.[5]

In addition to the demands of the small states and the rivalry of the land companies, there were other pressures for the surrender of the western land claims. The Continental Congress was in sore need of money for which the western lands offered the best hope at the time. Also, the Congress had promised land bounties to enlisted men and officers and bounties of 50 acres to Hessian and other foreign mercenaries in the British Army who would desert. It had also promised to reward "amply" officers and soldiers of the British Army who would desert.[6]

Thomas Jefferson's position on the western land claims reflects his abhorrence of speculators and is consistent with his belief that the public lands should be made available in small tracts to actual settlers. He felt the "interests of the pioneers could be better safeguarded by states than by Congress which seemed more susceptible to the pressure of speculative land companies." It was, therefore, not parochialism that led him to favor Virginia's withholding her western lands until he could be assured that the rights of small settlers would be protected, as he had tried to protect them in Kentucky.[7]

[5] Thomas P. Abernethy, *Western Lands and the American Revolution* (New York, 1937), esp. pp. 189 ff.; Merrill Jensen, *The Articles of Confederation* (Madison, Wis., 1940), pp. 198 ff.

[6] Ford, *Journals*, Aug. 14, 1776, V, 665 and April 29, 1778, X, 406.

[7] Dumas Malone, *Jefferson the Virginian* (Vol. 1 of *Jefferson and His Times*, [Boston, 1948]), pp. 238, 244, 251 ff.; 412 ff.

The sharpness of feeling expressed by Maryland and New Jersey over the "selfishness" of the states with western land claims and the equally sharp remonstrance from Virginia led Congress to adopt on September 6, 1780, a mollifying resolution in which it pressed for "a liberal surrender" of the western lands to remove the only obstacle to the final ratification of the Articles of Confederation, and at the same time it "earnestly requested" the Legislature of Maryland to authorize ratification.[8]

A month later Congress drafted and adopted a general statement indicating the policy it would follow in the administration of any lands ceded to it. The lands were to be "disposed of for the common benefit of the United States," were to be "settled and formed into distinct republican States, which shall become members of the Federal Union, and shall have the same rights of sovereignty, freedom and independence, as the other States. . . ." The lands were to "be granted and settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled. . . ."[9] This statement of policy, adopted before the United States had any public lands and before the Articles of Confederation were ratified and in force, is significant for its assumption of authority by the Congress. The Articles themselves did not give the Confederation power to receive lands from the states, to manage and dispose of them, nor to institute governments and make laws for their inhabitants.

State Cessions

(The reader is referred to the map, Chapter V).

Maryland was finally brought to accede to the Articles of Confederation in 1781 by the threat that the British success in the South posed and by an indication that Vir-

[8] Ford, *Journals*, XVII, 806–807.

[9] Ford, *Journals*, XVIII, 915.

ginia was moving towards cession of its western lands. New York had already in 1780 given its delegates authority to cede all its land claims west of the present border of the state. Virginians were prepared to make the cession but were anxious to prevent four land companies—the Indiana, Vandalia, Illinois, and Wabash Companies, with their dubious claims to western lands derived from the Indians and from Great Britain—from gaining confirmation of their titles. That some Maryland leaders were investors in these companies did little to simplify the issue.

In its first act of cession Virginia attempted to require Congress to declare null and void all previous purchases from Indians in the Ohio country. This would have destroyed the basis of the companies' claims, but Congress declined to accept the condition. Virginia's final Act of Cession of 1783 dropped this condition, but implied that Virginia did not expect Congress to recognize these claims. The lobbyists for the companies continued their agitation for confirmation or redress, but national welfare won out over special interests and the companies' claims all lapsed. In its final form, the cession of Virginia conveyed its title to all land north of the Ohio and east of the Mississippi River on the following conditions: the French inhabitants were to have their claims confirmed; 150,000 acres were to be granted to George Rogers Clark and his officers and men who had taken part in the conquest of the Old Northwest; the land between the Little Miami and the Scioto Rivers was to be retained, if necessary, to satisfy bounties promised soldiers of the Revolution; the balance of the land thus ceded and not required to satisfy the land bounties Congress had promised was to be "considered as a common fund for the use and benefit of such of the United States as have become, or shall become, members of the Confederation . . . Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever." Another condition was that the ceded territory was to be divided into states not less than 100 miles square and not over 150 miles square and that they should be admitted into the Union with the same "rights of sovereignty, freedom, and independence, as the other States."[10] Twenty or 25 new commonwealths of this size might have been created out of the area. However, in 1788 Virginia agreed that from three to five states might be carved out of the ceded territory.

Massachusetts ceded its western lands beyond the New York border in 1785 but retained its claim to western New York as well as its ownership of the public lands in the territory of Maine. Connecticut offered in 1780 to cede title but not jurisdiction to its western lands. The offer was held to be unsatisfactory, and was rejected. In 1786 a second offer was accepted. The cession included all Connecticut's claim to land west of the western border of Pennsylvania except for a reserve 120 miles long—the Connecticut Western Reserve and the Firelands—totaling 3,800,000 acres, in which both soil and jurisdiction were reserved. After granting away the land, Connecticut released jurisdiction to the Federal government in 1797.

In 1787 South Carolina ceded its narrow strip of land west of the mountains and drained by the Tennessee River. This 12- to 14-mile wide strip became the extreme northern parts of Georgia, Alabama, and Mississippi.[11]

North Carolina and Virginia had permitted settlement and the location of military

[10] Donaldson, *The Public Domain*, pp. 67–70.

[11] I have relied on Donaldson, *The Public Domain* for the dates and acreage of land cession. Payson J. Treat, *The National Land System 1785–1820* (New York, 1910) is also useful. For issues between South Carolina and Georgia over the boundary see Kenneth Coleman, *The American Revolution in Georgia, 1763–1789* (Athens, Ga., 1958), pp. 257 ff.

bounties west of the mountains in what are today the States of Tennessee and Kentucky. Their haphazard land systems which permitted prior settlement or location of warrants in any manner the owner wished, so long as he was not trespassing on Indian land or on the property of other grantees, resulted in duplicate and overlapping land claims or "shingling." In desirable areas where large speculative holdings were established, claims were sometimes three to five deep. Neither state had developed a well-maintained land office where titles and vacant lands could be investigated and neither had any adequate local title registration system. When residents of the western portions of these states were trying to frame constitutions and to obtain admission to the Union, it was impossible to determine what amount of land was still owned by Virginia or North Carolina.

After the meeting of 10 conventions to draft a constitution and the adoption of four enabling acts by Virginia, Kentucky finally was admitted to the Union in 1792 as the Fifteenth State. Ungranted land, if any, was turned over to the new state which entered into a compact with Virginia, later interpreted by Justice Story to mean that the rights and interests of the grantees of Virginia "shall be exclusively determined by the laws of Virginia, and that their security and validity shall not be in any way impaired by the laws of Kentucky." Kentuckians could not accept such an inferior and subordinate position and they openly flouted the two decisions upholding it.[12]

North Carolina took a more devious path in dealing with its western lands. Before it ceded them a wily group of land speculators secured favorable state legislation and the appointment of cooperative land entry officials in the North Carolina area beyond the mountains; thus they were enabled to gain rights to huge acreages of the best land. Having secured the desired land and kept out competitors, the speculators had the land office closed. Then, in 1784, they carried through the North Carolina Legislature a measure to provide for the cession of the western lands to the United States with conditions calculated to enhance the value of their holdings. The unpopularity of the act of cession led to its repeal the same year, before Congress had time to act upon it. In 1789–90 the legislature again enacted a cession measure on the following conditions, essentially the same as those in the previous act: the claims of the state's Revolutionary War soldiers to land bounties should be satisfied; if there was not sufficient land fit for settlement in the Military Reservation in central Tennessee, other unappropriated land should be made available for the payment of the bounties; all claims to land under earlier North Carolina statutes, even though they had not ripened into grants at the time of cession, were to be valid; the North Carolina occupancy and preemption laws were to remain in force for any rights previously established; and lands of nonresidents were not to be taxed higher than those of residents. North Carolina seems to have assumed that there would be some vacant land in Tennessee, to which the United States would have title. Borrowing from the Virginia cession of 1784 the idea and phraseology that the lands thus ceded were for the benefit of all states, North Carolina insisted that "all the lands intended to be ceded by virtue of this act . . . shall be considered as a common fund for the use and benefit of the United States of America, North Carolina inclusive, . . . and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever."[13]

These conditions in the Act of Cession and

[12] Paul W. Gates, "Tenants of the Log Cabin," *Mississippi Valley Historical Review*, XLIX (June 1962), 3 ff., esp. 17. For the two decisions by Joseph Story and Bushrod Washington see 8 *Wheaton*, 11 and 69.

[13] Donaldson, *The Public Domain*, pp. 76 ff.

the loose way in which North Carolina had administered her western lands made the surrender something less than a welcome addition to the responsibilities of the new government. If the conditions had been carried out completely they would have required the United States to bring order out of the chaotic land and title business and to apply North Carolina law to outstanding claims and United States statutes to land conveyed in the future. But the issues were even more complex.

North Carolina continued to grant bounty lands to its war veterans in the new Federal Territory of Tennessee, and it was learned that outstanding claims would absorb practically all the land in the territory to which the Indian title had been surrendered. When Tennessee entered the Union in 1796, it denied the right of North Carolina to grant any land within its boundaries and declared that Congress had no claim to vacant lands in the state because there was no reservation of such lands in the act of admission. Although Congress refused to accept Tennessee's position concerning vacant lands, it never succeeded in extending its land system over any part of the state. Out of this most unusual imbroglio came a compromise in the form of a compact between North Carolina, Tennessee, and the United States which set up a Congressional Reservation in western Tennessee to be retained for the United States. But as numerous speculators' and squatters' rights had already been established in this reserve, even though the Indian rights had not been conveyed, the ownership of the land by the Federal government was practically meaningless. From then until 1841, titles in the reservation were in confusion. Finally in that year, Congress made Tennessee a Federal agent for the management and disposal of the land. As Thomas Jones, the author of an excellent study of "Tennessee's 'Public Lands,' " concludes, "All the Federal Government had left as a memento to assure itself that at one time Tennessee was a public land state was a record of 640 acres that were sold as a townsite for an unlikely place known as Pulaski."[14]

Last to cede its western lands was Georgia. Its first cession, authorized in 1788, was rejected because it included only part of Georgia's western lands, and a portion thus offered was in the British Territory of West Florida. The rejection proved unfortunate for both Georgia and the United States because of the serious difficulties subsequently created when the state tried to sell its lands to a number of land companies. The first sale, for 25,400,000 acres, was made in December 1789, to three Yazoo companies at less than a cent an acre. It failed to be carried through, though for years the would-be purchasers tried to secure damages for losses, presumably of anticipated profits. In 1795 another sale was made to four land companies which agreed to pay $500,000 for an estimated 21,500,000 acres, or 1¼ cents an acre. The territory sold would have amounted actually to 35 million or 40 million acres. Such an astounding sale brought immediate charge of fraud, soon clearly proved, and the succeeding legislature rescinded the act of sale in 1796. Meantime, ownership of shares in the four land companies had been widely distributed and lobbyists began their long campaign to secure relief. [15]

For years Georgia was bedeviled by the scandals growing out of the "Yazoo frauds," as the sale of 1795 was called, and by an even more pressing issue—the Creek Indians, who were not found easy to move from land within the state. Despairing of solving either issue without Federal aid, the legislature was

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[14] I have drawn heavily from Thomas B. Jones, "Tennessee's 'Public Lands,' " (unpublished) and his briefer "The Public Lands of Tennessee," *Tennessee Historical Quarterly*, 27 (Spring 1968), 13–36.

[15] *American State Papers, Public Lands*, I, 133–35; C. Peter Magrath, *Yazoo Law and Politics in the New Republic. The Case of Fletcher v. Peck* (Providence, 1966), *passim*.

brought in 1802 to cede the western lands but with more favorable conditions than usual: the Federal government was required to pay Georgia $1,250,000 out of the first net proceeds from the sale of lands "for the expenses incurred by the said State, in relation to the said territory. . . ." In this respect Georgia was unique, since no other state managed to obtain cash for its sole benefit from the sale of lands. All "legally and fully executed" grants by the British, Spanish, or Georgia Governments were to be confirmed. The United States was to assume responsibility for any claims growing out of the forfeited sale of 1795 and was authorized to use for that purpose up to 5 million acres of land, or the proceeds of that quantity of land, if done within a year. It was also to "extinguish . . . as early as the same can be obtained, on reasonable terms" the title of the Creek Indians to a tract in central Georgia and to extinguish "the Indian title to all the other lands" in Georgia. All the ceded lands not required to fulfill the foregoing conditions were, again borrowing from the Virginia cession, to be "considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever. . . ."[16]

Georgia became quite dissatisfied when the Federal government failed to remove the Indians speedily and to open their lands to settlement. Hence, it may have been no accident that the state's commissioners did not ratify the compact for the cession of its lands until the very day the Creeks were persuaded to sign a treaty giving up the land on the Oconee that the state wanted so badly.[17]

By the conditions of its cession Georgia had washed its hands of the Yazoo frauds, but the problem was to be on the doorstep of Congress for many years, taking a disproportionate amount of its time. In 1814 Congress was persuaded to vote $5 million from the proceeds of land sales in the territory ceded by Georgia to be divided among the holders of shares in the four land companies. Generous as the award was, some claimants were dissatisfied and for two generations kept up the demand for additional compensation.[18]

The Federal public domain created by these cessions from the seven states amounted to 237 million acres.[19] From this area should be deducted 3,800,000 acres in the Connecticut Western Reserve and the Fireland tract which the Yankee commonwealth retained, and 4,204,000 acres reserved by Virginia to satisfy the bounty warrants it had given soldiers of the Revolution. The 237 million acres also included numerous claims to land granted by France, Spain, and Great Britain which the United States was bound to recognize and confirm if found valid. Not included in this total is land in Tennessee which was ceded to the United States but was subsequently turned over to Tennessee for management. Nor is the small segment of land ceded by South Carolina but subsequently given to Georgia included.

Areas Retained after Cessions

It should be clear that the Original States did not give up all their ungranted lands either within or outside their borders. A number of them had large areas to dispose of as they wished after the cessions were made. Massachusetts retained its province

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[16] *American State Papers, Public Lands*, I, 125–26.

[17] Donaldson, *The Public Domain*, p. 81; C. C. Royce, *Indian Land Cessions in the United States, Eighteenth Annual Report of the Bureau of American Ethnology* (Washington, 1899), Part 2, p. 660 and map of Georgia. It was not until 1835 that the last cession of Indian land was made.

[18] Act of March 31, 1814, 3 Stat. 116; C. H. Haskins, "The Yazoo Land Companies," *Papers of the American Historical Association*, V (October 1891), 61–103. Haskins (102n) says that a "final" adverse decision was rendered against the claimants by the Court of Claims in 1864.

[19] *Cf.*, Marion Clawson and Burnell R. Held, *The Federal Lands: Their Use and Management* (Baltimore 1957), p. 21.

of Maine where the ungranted lands amounted to millions of acres. It was conceded ownership of 6 million acres in western New York beyond the Preemption Line, and also ownership of the Boston Ten Townships, 230,400 acres in present Tioga County. The public domain of Connecticut in the Western Reserve was, like the public domain of Massachusetts, considerably larger than the area within the state's borders. New Hampshire had lost to New York its claim to the region beyond the Connecticut River by a royal decree of 1764 but the inhabitants refused to accept New York's control and existed virtually as a free state until the area was admitted into the Federal Union in 1791 as the first new State—Vermont. New York received from Vermont a token payment for the land. The public lands in the new state were retained by it. Despite New York's loss of the lands beyond the Preemption Line, the Boston Ten Townships and the Vermont land, it still possessed a large area of public land. Pennsylvania, having taken over the property of the Penn family, was granting land long after the other states had made their cessions. The state with the largest amount of ungranted land after its cession was Georgia. By a rough estimate, little more than a third of Georgia had been cleared of Indian titles in 1802, leaving at least 24 million acres that were subsequently to become public lands of the state.

Maryland, New Jersey, and Delaware felt most keenly their small-state character and their lack of a supply of public lands to attract new settlers, to satisfy the land bounties promised their soldiers, and to provide a source of income for their treasuries. Over and over, Maryland delegates expressed their concern about the weak position of their state in comparison with that of powerful Virginia; this concern should not be attributed solely to the fact that prominent Maryland men were speculating in western lands. Neither was Maryland solely motivated by jealousy of the landed states. Its position that the Ohio country had been won by the soldiers of and at the expense of the United States was logical. The land must therefore belong to the United States and its benefits should be shared by all the states of the Union.

The Public Domain—Asset and Liability

By the cession of the western land claims the United States acquired ownership of a supply of land that was to be of paramount importance in the growth of national power, in attracting millions of Europeans to settle in new communities of the American West, in creating transportation ties binding these new communities to the older ones, and in making possible the foundation of a common school system, state universities, colleges of agriculture and mechanical arts. The transfer of these territories probably did more than anything else at the time to give prestige to the government. Long before Congress could bring itself to vote funds in aid of internal improvements, such as roads, turnpikes, canals, and railroads, or to subsidize education, or to assist the states to build their capitals, drain wet areas, irrigate dry areas and promote forestation, it could do all these things by granting public land under the guise of adding to the value of the remaining public lands. This use of the public lands enabled the United States to break through the rigidities of constitutional thought as expounded by Calhoun and the strict constructionists and to develop a flexibility in the exercise of Federal power.

There developed another side of the picture that could scarcely have been foreseen. It has already been suggested that Georgia's act of cession dumped upon the Federal government all responsibility for the action of its legislature in repudiating the sale of 1795. Virginia's cession also left to the Federal government responsibility for satisfying the demands of its veterans who could not find land in the Military Tract. This involved congressional committees and officials of the General Land Office in many tedious

hours of trying to satisfy all worthy claimants. It was the Federal government which had to deal with the thousands of land claims based on grants of predecessor governments, calling for consideration of French and Spanish as well as English land laws. Hundreds of these claims came before the District Courts, Courts of Appeal, and the Supreme Court, absorbing much of the time of the judges and of the lawyers in the Department of Justice. It was the Federal government which had to take jurisdiction of Indian relations within states, notwithstanding the very cautious saving clause in the Articles of Confederation and the very general statement in the Constitution of 1787. While the use of the public lands was to be a vital nationalizing factor in American development, from the viewpoint of those advocates of preserving power in the hands of the state governments, this exercise of power was disastrous.

CESSIONS OF WESTERN LAND CLAIMS[a]

		Acres Jointly Claimed	*Acres Solely Claimed*
New York	1781	202,187 (Erie triangle)	
Virginia	1784	164,118,800	103,950,800*
Massachusetts	1785	34,560,000 (also Erie triangle)	
Connecticut	1786	25,600,000 (3,800,000 reserved)	
South Carolina	1787		3,136,000
North Carolina	1789–1790		[26,679,600]**
Georgia	1802		56,689,920

* I have here disregarded New York's shadowy claim.
** Nominal, as most of the land in Tennessee had been alienated by 1790.

PUBLIC LANDS BY STATES TO 1802

Ohio	18,069,600	(Virginia Military Tract and Western Reserve excluded)
Indiana	23,068,800	
Illinois	35,867,520	
Michigan	36,492,160	
Wisconsin	35,011,200	
Minnesota	16,640,000	(portion east of the Mississippi River)
Alabama & Mississippi	59,825,920	(A portion of the South Carolina cession of 3,136,000 acres was given to Georgia by the United States. Excluding this the total of the cessions of Georgia and South Carolina in Alabama and Mississippi seems somewhat excessive.)
	224,975,200	

[a] Donaldson, *The Public Domain*, pp. 11 ff.; *Public Land Statistics, 1964*, p. 4; Treat, *National Land System*, p. 395. *Public Land Statistics* estimate of cessions by the states is 233,415,680. My guess is that this total includes the 8,004,000 acres that Virginia and Connecticut reserved and which never were a part of the public domain.

CHAPTER IV

Land Ordinance of 1785

After the surrender of Cornwallis at Yorktown and the signing of the Treaty of Paris that ended the Revolution, the issues most urgently demanding the attention of the Congress of the Confederation, aside from revenue, were Indians and lands. England had made its peace with the young Nation but the Indians had not and were not anxious to do so. To them, Americans—whether speculating land companies, squatters, or traders—were landgrabbers who gouged in trade, offered cheap and inferior goods, were stingy about gifts, and watered their liquor. Worse still, they had in the past used most unfair means to gain the signatures of chieftains to treaties involving the surrender of land the Indians wanted to retain in tribal use.

Veterans Seek Land

Demobilization of the Continental Army and of the militia of the states set thousands of soldiers footloose at a time when economic activity in the country was at a low point. The men had been promised land bounties but these could not yet be located in the Military Tracts in either New York or Ohio because of various delaying factors, including the recalcitrance of the Indians and slowness in getting the lands surveyed. Furthermore, most of the rank and file had to sell their rights for cash to take care of themselves and their families for a time. In this situation, the Genesee or Ohio lands which some of them had seen on the march appeared very attractive. Many veterans swarmed into the West, especially from Virginia, North Carolina, and Pennsylvania where squatting had long existed and was, indeed, tolerated and sanctioned. They rushed across the Ohio and into Kentucky and Tennessee where Indians still claimed the land and threatened to bring on renewed warfare.

Indians Retard Ohio Settlement

Though the framers of the Articles of Confederation had tried to place control over Indian affairs with the Confederation, some states still felt that they had prime responsibility for relations with the Indians within their borders. Both Georgia and North Carolina jeopardized the efforts of the Confederation to maintain peace. The central government was weak and unable to prevent intrusions into Indian-claimed land and to show at the same time both generosity and military might to the natives; thus it was impossible to negotiate binding treaties that would open the Ohio country to sale and settlement and to establish peace along the frontier.[1]

The Ohio Indians became increasingly restless as they watched squatters and speculators move into areas they cherished. They resented deeply the treaties made with various tribal chiefs committing unrepresented but powerful tribes to cessions of part of their land. Three successive treaties negotiated at

[1] F. P. Prucha, *American Indian Policy in the Formative Years* (Cambridge, Mass., 1962), pp. 41 ff.; W. H. Mohr, *Federal Indian Relations, 1774–1788, passim.*

Fort McIntosh, Fort Finney, and Fort Harmar were never carried into effect. Moreover, the Indians came to distrust the Americans because assurances of protection against squatters, unfair traders, and hostile local officials proved worthless. The American position was that the United States had defeated Great Britain and her Indian allies, and that the Indians must now accept American control and must surrender such lands as were wanted; the Ohio country was to be opened to settlement; very modest compensation would be offered the Indians for their occupancy rights, but they must give way. To this the tribes could not agree. They turned to a revival of tribal confederacy so that they could more effectively resist the pressures being exerted on them. They were encouraged in their resistance by the British and by Joseph Brant, the very able leader of the Mohawks.

Representatives of all the tribes of the Ohio and Great Lakes country—including the Iroquois, Shawnee, Miami, and Cherokee—drafted an address asking, among other things: that the surveyors then at work in the Seven Ranges be withdrawn; that the treaties of Fort Stanwyx with the Iroquois, and of Fort McIntosh and Fort Finney with Ohio tribes, be reconsidered; that the land cessions be cancelled; and the Ohio River be made the southern boundary of tribal lands. Division among the tribes and the government's policy of playing one off against another weakened the Indian confederacy and for the moment its potential for resistance seemed to evaporate.[2]

Indian restlessness was in no way diminished by the treatment the Indians received from white settlers and government agents. Numerous incidents of murder and pillage finally brought emotions to a high state of tension, then to war. In 1790 General Harmar was dispatched with an army of 1,453 soldiers into the Wabash Valley to discipline the Miami. He was soundly whipped. The following year General Arthur St. Clair, territorial Governor of Ohio, made a second military expedition against the recalcitrant and now jubilant Indians, only to suffer one of the most disastrous defeats the American Army has ever undergone.

Behind the restless Indians who were unwilling to accept American control were the British, who had retained Forts Oswego, Niagara, Detroit, and Mackinaw. In exchange for furs, they continued to supply the Indians with gifts, rations, medals, weapons, clothing, and goods of better quality than the Americans offered. The British did not want to lose control of the fur trade and also feared that hasty withdrawal from the forts might lead to a disastrous Indian uprising from which all whites would suffer. The continued domination of the fur trade by the British, their retention of the posts, and the Indian outrages for which they were regarded as responsible, all exacerbated the frontiersmen's feelings and might have produced war between the two Anglo-Saxon nations.

St. Clair's disaster and the overwhelming Indian victory forced the withdrawal of many settlers from the Ohio country and contracted the zone of settlement. The American government now realized that only overpowering might and a thorough defeat of the Indians would make safe the further advance of settlement in Ohio. But before retribution was to be exacted the Americans tried once more to make peace, offering in 1793 to give up part of the land supposedly ceded at Fort Harmar and to make a gift of $50,000 and an annuity of $10,000. However, only complete withdrawal from the Ohio country would satisfy the natives, and negotiations broke down. General Anthony Wayne now took charge of the American Army, marched it to the Maumee, and there at Fallen Timbers defeated the combined forces of the Indians. The tribes became disillusioned when the British, who had given them hope of aid,

[2] I have drawn heavily upon R. G. Downes, *Council Fires on the Upper Ohio* (Pittsburgh, 1940), pp. 277 ff., in addition to Mohr's and Prucha's accounts.

rendered no assistance. In 1795, the Confederated Indians, cowed by American might, signed at Greenville a treaty surrendering nearly two-thirds of present Ohio and some territory in southeastern Indiana. Moreover, on November 14, 1794, John Jay had signed a treaty with Great Britain which provided for the surrender of the posts along the frontier on June 1, 1796. With the withdrawal of the British the Americans could now succeed in establishing firm control over Indian relations south of the line.[3]

Land Revenues Become Imperative

Long before the final withdrawal of the British and the surrender of the Indians, the Ohio country had attracted the attention of the financiers of the Confederation anxious to secure revenue from its lands. Speculators who hoped to acquire rich tracts and settlers dissatisfied with the opportunities available in western Pennsylvania, Virginia, and Kentucky had been looking longingly at the land.

Although the desire for revenue had not been a strongly motivating force in shaping the land policies of the Colonies—except Maryland and Pennsylvania—it was anticipated from the first in the Continental Congress that revenues from the public domain, when acquired, would be used to discharge the national debt. Before anything could be done to capitalize on land in the Ohio country, the title to it had to be perfected. This involved prolonged discussions with the states, particularly Virginia and Georgia, concerning the conditions of their acts of cession. When these negotiations were successfully concluded the Congress of the Confederation could draft a plan for the management and sale of the lands.[4]

Thomas Jefferson, one of the few leaders in state and national affairs who had not been connected with any of the land companies, was a member of a committee to develop a plan for the government of the territory and management of the lands. His committee first reported a plan for the government of the Northwest Territory; it was adopted in 1784 but never went into effect, being displaced by the Northwest Ordinance of 1787. Its proposal for the survey and sale of the lands north of the Ohio provided that after the Indian title had been extinguished, the lands were to be surveyed on the rectangular system with a base line crossed by meridians every 10 miles, which were to be extended north and south with due regard to the magnetic deflection. A strong advocate of the decimal system in weights and measures, Jefferson proposed to use a geographical mile of 6,086 feet which would have permitted the establishment of "hundreds" or squares 10 miles square and the division of the hundreds into 100 lots or sections of one square mile (850 acres). The base and meridian lines were to be carefully surveyed with a chain, were to be "plainly marked by chaps or marks on the trees," and were to be "exactly described on a plat, where shall be noted, at their proper distances, all water-courses, mountains, and other remarkable and permanent things, over or near which such lines shall pass." The plan provided for the purchase of land warrants with loan office certificates "reduced to their specie value by the scale of depreciation," or with "certificates of liquidated debts of the United States. . . ." When the owner of the warrant had selected his land, he would tender the warrant to the surveyor of the district who, having made certain there was no previous location on the tract, was to confirm the location by a certificate. The certificate with the warrant was then to be delivered to the register who would complete the transaction by issuing a patent for the land. Thus a proud Virginian acknowledged that his state's system of indiscriminate

[3] Beverley W. Bond, Jr., *Civilization of the Old Northwest* (New York, 1934), *passim;* Bond, *The Foundations of Ohio* (Vol. 1 of *History of the State of Ohio*, edited by Carl Wittke [Columbus, Ohio, 1941]), *passim.*

[4] Merrill Jensen, *The Articles of Confederation* (Madison, Wis., 1940), pp. 232 ff.; also *id.*, *The New Nation* (New York, 1950), pp. 351 ff.

settlement and subsequent survey by metes and bounds was inferior to New England's system of prior survey into rectangular units.[5]

The only important feature of the Virginia system that Jefferson's committee carried over into its recommendations was the delay of months between the filing of the warrant with certificate of location and the issue of the patent; this delay would permit adverse interests to enter a caveat setting forth the nature of their claims. Conflicting and overlapping claims were so common in Virginia that it seemed almost usual for caveats to be entered for the purpose of suspending patent proceedings until evidence could be presented in behalf of anterior claimants and a trial held. The United States was later to allow a somewhat similar privilege by announcing through local papers the imminence of final disposition of lands and warning adverse claimants to appear and offer evidence of why patents should not be issued.

Jefferson was an agrarian who in 1776 had said that he was "against selling the lands at all." To make a charge for the public lands would fix upon poor settlers an obligation they could ill afford. "There is no equity in fixing upon them the whole burthen of this war, or any other proportion than we bear ourselves. By selling the lands to them, you will disgust them, and cause an avulsion to them from the common union. They will settle the lands in spite of everybody." The most often-quoted statement of Jefferson on public lands and the land policy of September 6, 1789, is equally forceful: "Whenever there is in any country uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The small land holders are the most precious part of a state."[6]

In drafting the first plan for a Land Ordinance in 1784, Jefferson drew on his own experience in the Virginia Legislature where he had drafted a bill to establish a land office. In that earlier measure, which was designed to encourage migration of foreigners, "promote Population," increase the revenue of Virginia, and create a fund for the discharge of the state's debts, he had provided for the continuation of headrights to immigrants and had favored grants of 75 acres to each native-born Virginian on his marriage. Beyond that, he favored sale. Headrights and small free grants would assure widespread ownership of land, which he regarded as the basis of democracy. There is close similarity between the two drafts of 1778 and 1784, except that headrights and free grants were not included in the latter.

It must have been difficult for Jefferson, who was so sincerely devoted to agrarian democracy and who was, with Madison, critical of the activities of speculators, to have had a part in opening the public lands to them.[7] Not only did his Ordinance of 1784

[5] Julian P. Boyd, *The Papers of Thomas Jefferson* (Princeton, N. J., 1950), VII, 141, *passim.*

[6] Jefferson to Edmund Pendleton, August 13, 1776, Boyd, *The Papers of Thomas Jefferson*, I, 492.

[7] For the 1778 bill in the Virginia House see Boyd, *Papers of Thomas Jefferson*, I, 139. Some economic historians think of the term speculator as one of reproach, almost synonymous with one who manipulates. Since I will have to use it frequently in this account, I must explain the meaning of the term historically. A land speculator in the 18th or 19th century was one who either individually or with others bought up public land, perhaps built roads into it, possibly made other improvements, advertised his land in various ways to attract buyers who might be small speculators or actual settlers. Or, a speculator might have been perfectly passive about his investment, doing nothing to enhance its value and only waiting for the unearned increment which society might give the land. Robert Morris, the most constant land speculator of the late-18th century, whose schemes were scarcely matched in the Western Hemisphere, wrote in a prospectus of the North American Land Company: "The proprietor of back lands gives himself no other trouble about them than to pay taxes, which are inconsiderable. As nature left them, so they lie till circumstances give them value. The proprietor is then sought out by the settler who chanced to pitch upon them, or who has made an improvement thereon, and receives from him a price which fully repays his original advance with interest." (A. M. Sakolski, *The Great American Land Bubble* [New York, 1932], p. 48.) Misleading

provide for the sale of public lands without naming the price and without restrictions on large purchases, but when President he took no steps to reduce the very high price of government land.[8] Moreover, he signed an act authorizing the use of troops to expel persons who in the future should make any illegal settlement on public lands or who attempted to create any right in land by surveying it or even blazing trees upon it.[9]

Jefferson's proposal for a land ordinance to provide for the sale of the western lands received little support in 1784 and nothing was accomplished. In 1785, however, the country's financial condition had changed for the worse. Congress had requested an impost and the states had failed to honor fully the requisitions made upon them. Interest on government securities was mounting, foreign obligations were not being met, the credit of the Nation had fallen to a low level, and its government was forced to get along on the smallest expenditures possible. The sale of western lands now seemed to be the last resort; Congress turned to plans for their disposal.

Methods of Disposal Debated

Immediately a clash developed: on the one side were advocates of the Virginia method of indiscriminate location and subsequent survey, with all the heavy costs of filing caveats and the extensive litigation that followed; on the other side were proponents of the more orderly New England system with its township grants to proprietors, survey and sectioning of the townships before settlement, reserve lots for church, minister, and school. In the South, much of the better land was contained in large plantations wastefully worked by numerous slaves and servants; small farms were generally to be found on the poor land; population was thin, absentee ownership common, public schools lacking, and religious influences minimal. All this was in sharp contrast to the small farms, compact settlement, absence of large speculatively owned tracts, and the early presence of the church and school in New England. Jefferson had recognized the advantages of the New England system but other delegates from the South found it more difficult to give up their method of land management which offered protection to the squatter, tolerated the individualistic frontiersman with his inclination to go wherever the spirit moved him, and permitted him to delay for years before filing his warrants and his survey of the lands he had taken up. Furthermore, in somewhat broken territory like much of southern Ohio,

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as is this statement, it represented the viewpoint of many speculators, then and later. Some students prefer "investor" because it suggests no opprobrium. Washington, Franklin, and most other public men were speculators in land companies if they were not, as Washington, personally holding large acreages of undeveloped land from which they anticipated high returns. They may be regarded as "entrepreneurs," promoters, developers, even empire builders, or mere "petty capitalists" but contemporaries did not so regard them. They operated in the open, as well as manipulated in the dark; they were in Congress, on the bench, and in other public positions and frequently did not draw a fine line, as did Thomas Jefferson, between their personal and their public activities. Modern notions of conflict of interest did not disturb them. On the other hand, I suspect that their contemporaries were more aware of the private business operations in which Patrick Henry, George Morgan, Robert Morris, and George Washington were involved than modern society knows about the investments and other sources of private income of its high officials. I am not enamored with the uncritical manner in which some writers characterized Manasseh Cutler, Rufus Putnam, John Cleves Symmes, or Rufus King. Contemporaries, whether critical of their operations or not, thought of them as speculators or land jobbers.

Advertisements addressed "To Speculators" which appeared in the Cincinnati *Daily Gazette* for Jan. 4, July 18, Nov. 8 and 16, 1836, indicate that there was no sensitivity of the use of the term. Notices "To Speculators" called attention to two stores, a small tenant farm, a double brick house, various lots and 200 acres for sale, and a mill property which was offered as a "Splendid Speculation."

[8] Adrienne Koch, *Jefferson and Madison. The Great Collaboration* (New York, 1950), pp. 62 ff.

[9] Act of March 3, 1807, *Annals of Congress*, 9th Cong., 2d sess., p. 1288.

the artificial nature of farm units to be arbitrarily created by a rectangular system did appear to have faults, as contrasted with a system which conformed to the natural features of the country.

Debates over the respective merits of the two methods of land disposal would fill 40 volumes, said William Grayson, delegate from Virginia and member of the Grand Committee to draft a land ordinance. Like Jefferson, Grayson came to see the advantages of the New England system, and sent to George Washington the committee's reasons for incorporating so many of its features into the measure it reported. The plan to sell townships of land by "public Vendue" appeared to some "eccentric, and objectionable" but the committee thought the auction desirable because land differed in quality. Persons near at hand would be aware of these differences and would bid up the good land at the auction. Experience in the "eastern States" had shown that sales of full townships had not contributed to monopolization of land; on the contrary, it was there that "lands are more equally divided than in any other part of the Continent. . . ." The "idea of a township with the temptation of a support for religion and education, holds forth an inducement for neighborhoods of the same religious sentiments to confederate for the purpose of purchasing and settling together." Grayson said it was believed that "the Southern mode would defeat this end by introducing . . . indiscriminate locations and settlements, which would have a tendency to destroy all those inducements to emigration which are derived from friendships, religion and relative connections." Speculators and "ingrossers" could not long retain the lands they purchased on account of the high price they would have to pay and the loss of interest on their funds while the lands were uncultivated. Even if they did make money in purchasing large tracts, they would only do so at the expense of European immigrants who were not at hand to buy directly. In any case, the great design of the plan was to provide revenue for the government. Sales by townships could be carried into effect much more expeditiously than could sales by small tracts, and all the problems of subdivision and collections from many purchasers would be avoided. Prior rectangular surveys would avoid the necessity of land courts and the appointment of many new officials, would make unnecessary the filing of caveats, and would prevent volumes of litigation.[10]

Land Policies Emerge

Any assessment of the Land Ordinance of 1785 and the supplementary legislation of the Confederation is made difficult by the absence of records of debates in Congress. Contemporary comments in the letters of the members of Congress reveal some of the measures being exerted to influence the shaping of the Land Ordinance. Grayson's conversion to the New England system could not have been easy for him for he found the eastern delegates "amazingly attached to their own customs, and unreasonably anxious to have everything regulated according to their own pleasure." James Monroe thought the eastern men clung with "great obstinacy" to townships of 30,000 acres whereas the southerners were but "firmly oppos'd" to them. On the other hand, Rufus King of Massachusetts wrote that "Virginia makes many difficulties" in support of indiscriminate location. David Howell of Rhode Island declared the Land Ordinance "the most complicated and embarrassing Subject before Congress. . . . Infinite pains are taken by a certain sett of men vulgarly called Land robbers [jobbers], or Land-Sharks to have it in their power to engross the best lands. . . ."[11]

In New England, once the township was granted, responsibility for its survey, division into sections, and for the granting process

[10] Edmund C. Burnett (ed.), *Letters of Members of the Continental Congress* (8 vols., Washington, 1921–36), VIII, 95–97, 107.

[11] Burnett, *Letters*, VIII, 106, 109, 116.

was in the hands of the proprietors. Not having this responsibility, the state had no need of a land office and numerous administrative officers to handle questions of title. On the other hand, the southern way of migration westward was not by groups moving to a new township, but by individuals and families moving without direction, seeking a spot that suited them. The differences were resolved by a compromise that the rectangular system of survey made possible.

The rectangular system was one of the great features of the Land Ordinance of 1785 that has been retained in the national land system ever since. At the point where the Ohio River crosses the Pennsylvania border, a north-south line—a principal meridian—was to be run and a base line westward—the geographer's line—was to be surveyed; parallel lines of longitude and latitude were to be surveyed, each to be 6 miles apart, making for townships of 36 square miles or 23,040 acres. Seven rows or ranges of townships running south from the base line and west of the principal meridian were to be surveyed. Each township was to be divided into lots of one mile square containing 640 acres. This made possible the great compromise whereby alternate townships were to be sold intact, as New England wished, and the other townships were to be subject to sale by sections.

Because of the very pressing need of the government for revenue, little thought was given to the free grants that had been so characteristic a feature of the systems of land disposal in the South. At the very time the ordinance was being framed, land was being offered by the states for a few cents an acre in specie and there seemed little prospect that the Confederation could do much better from its more remote lands in the Ohio country. However, if the price of land were stated in terms of the government's depreciated securities, the lands might bring in considerable sums—in actual specie very little. What appears to be a very high price—a dollar an acre—was adopted, but since it was payable in depreciated securities, it meant only a few pennies an acre. The dollar an acre price of 1785 must be contrasted with the $2 an acre established in 1796. At that time government securities were rising in value and soon were to be at par. Thus land bought from the government after 1796 cost many times that acquired in the 1780's.

Even before the Revolution some New England states had taken to offering townships at auction. The New England delegates, impressed with the results, succeeded in including in the Land Ordinance of 1785 a provision that the public lands, when surveyed and ready for sale, should be put up at auction and sold to the highest bidder at $1 per acre or more. Henceforth until 1841, newly surveyed land could not be bought from the government until first offered at public auction, except where actual settlers who had previously made improvements were permitted under a number of limited preemption acts, beginning in 1830, to buy at the minimum price before the auction.

Yet another victory of New England in shaping Federal land policy was the reservation of section 16 in every township "for the maintenance of public schools within the said township." This, like the prior rectangular survey, the public auction, and the minimum price, was to be carried over into later legislation and to become a long-lasting feature of the land system. A provision which was carried over into the Acts of 1796 and 1800 but later dropped was the reservation of four sections—8, 11, 26, 29—for future disposition. Also, the ordinance reserved a "third part of all gold, silver, lead and copper mines, to be sold, or otherwise disposed of as Congress shall hereafter direct."[12]

Exclusions from Ordinance Notable

What was not included in the ordinance is as important as what was included. The

[12] The Land Ordinance of 1785 and the Northwest Ordinance of 1787 are in Commager (ed.), *Documents of American History*, pp. 123–24 and 128–32.

reservation for religion to which New Englanders were accustomed was omitted. Actually, in one draft of the ordinance a provision was included reserving a section in every township for religion; indeed, five states voted for it, to the disgust of Madison who thought it unjust, "hurtful to the sale of the public land, and smelling so strongly of antiquated Bigotry. . . "[13]

Also, there were no limitations included on the amount of land individuals or companies could purchase, nor was there any requirement for improvement or settlement on the land. This seems a step backward, for both the Crown and the colonial governments had adopted and tried to enforce restrictions on large transfers of land and to require "seating," though without much success. In later years, when the land limitation movement got under way, it proved very difficult to induce Congress to restrict the amount of land that speculators could acquire, though limitations were written into some measures such as preemption, graduation, and homestead.

Preemption—the right of the squatter to be protected against the speculator and to gain title to his land without competing for it at auction—was not included. In group-conscious New England, preemption was not needed and thus was nonexistent. But in Pennsylvania, Virginia, and North Carolina settlers had spread far and wide in their westward advance. Preemption was their guarantee of protection against speculators gaining ownership of their tracts after they had made improvements.

Squatting and squatters were not regarded altogether favorably by the more conservative people of the time nor by representatives of the great landowners like the Penns and the Fairfax family. Squatters were a rough and sometimes unruly lot. They were contemptuous of the rights of large owners, contributed no taxes to the support of government, and caused conflicts for colonial administrations by their intrusions into areas claimed by the Indians. James Logan, agent for the Penn holdings, described the Scotch-Irish—the most restless and least law-abiding of the hordes of immigrants coming into Pennsylvania—as "bold and indigent strangers" who, when challenged for their titles, replied that the Penns "had solicited for colonists and they had come accordingly." They took up land in "an audacious manner," alleging that "it was against the laws of God and nature that so much land should be idle while so many Christians wanted it to labor on to raise their bread."[14]

The granting of preferential rights to squatters, which came with the opening of the American Revolution, is a reflection of the agrarian character of that movement. In 1776 Virginia enacted a measure declaring that all settlers on unappropriated and otherwise unclaimed land should have a preemption right to as much as 400 acres west of the mountains. North Carolina began its preferential treatment of squatters as against the holders of military bounty warrants in 1777, allowing as much as 640 acres to each settler. In its Act of Cession of 1789, North Carolina declared "that all and every right of occupancy and preemption, and every other right reserved by any act or acts to persons settled on, and occupying lands within the limit of the lands hereby intended to be ceded . . . shall continue to be in full force, in the same manner as if the cession had not been made. . . ."[15] In 1784, both Pennsylvania and Massachusetts adopted preemption measures.[16] The Quaker Legislature had experimented with preemption in a limited way before 1776 but preferential rights to actual settlers became a regular part of its land

[13] Burnett, *Letters*, VIII, p. viii.

[14] Charles A. Hanna, *The Scotch-Irish or the Scot in North Britain, North Ireland, and North America* (2 vols., New York, 1902), II, 62–63.

[15] Thomas Donaldson, *The Public Domain*, p. 77.

[16] Henry Tatter, "The Preferential Treatment of the Actual Settler in the Primary Disposition of the Vacant Lands of the United States" (Ph.D. dissertation, Northwestern University, 1932), pp. 66 ff.

policies in the 1780's. Settlers were allowed to prove up on 300 acres and pay the minimum price the law specified.[17] Preemption had thus become a well-established feature of the land policies of the colonies and states by the time the Confederation had to grapple with the problem of land disposal.

Squatters Prevail

Land had been lavishly granted by all the Colonies outside of New England. Huge estates such as those of the Byrd, Carter, Livingston, Fairfax, and Rensselaer families had come into existence side by side with the many small holdings, all at a time when support of the governments came partly from quitrents. The faster lands were transferred to private ownership, the greater prospect there was for income from quitrents. But with the Revolution all this changed. Quitrents were abolished just when the need for public revenue was growing. With an abundance of public land in prospect, the Continental Congress began to think of deriving an income from it, even though this would mean a sharp break with past colonial policy. Furthermore, it would require putting an end to squatting and intrusions on the public land.

On September 22, 1783, before Congress actually owned an acre of land, it issued a proclamation forbidding settlement on or purchase of any land north of the Ohio River claimed by the Indians. Members of Congress were troubled at "the increase of feeble, disorderly and dispersed settlements in these remote and wide extended territories . . . the depravity of manners which they have a tendency to produce; the endless perplexities in which they must involve the administration of the affairs of the United States. . . ."[18] When the proclamation failed to deter people from settling north of the Ohio, Colonel Harmar was ordered to remove them and in 1785 with a small body of troops attempted to do so, but with little success. Congress then stepped in, instructed the authorities to stop the settlement of all unauthorized persons on the public lands and directed that the troops be used to drive off squatters wherever necessary. Again Colonel Harmar moved in, this time with a larger force, driving off the squatters, burning their cabins, rooting up their potatoes and other crops, destroying their fences, and forcing them to flee across the river to Kentucky and Virginia. But as soon as the troops were withdrawn the squatters returned, rebuilt their burned cabins, and resumed their farm-making operations, quite disdainful of the threat of ejectment.[19] Squatting could not be controlled. Among the thousands of people pouring into Ohio were many settlers who had earlier penetrated to the frontier parts of Kentucky, Pennsylvania, and western Virginia. There they had squatted upon undeveloped land with impunity, expecting either to get the value of their improvements if they were subsequently found to be on absentee-owned land, or to journey to Richmond to make an entry of their land and to take title when they were ready to do so. Squatting on the land of the Federal government to them was no different; it had all the justifications that squatting on colonial or state land had.

Neither the Ordinance of 1785 nor that of 1787 touched upon the prevalence of squatting upon the public lands, but the problem was nevertheless regarded as a serious one needing attention. Prevailing government opinion was strongly averse to the practice. Henry Knox, the Secretary of War, thought squatting was one of the most pressing questions facing the government because it threatened the expected income from the public lands. Speaking in 1787 of the "usurpa-

[17] Acts of Dec. 21, 1784, March 29, 1788, and April 10, 1792, *Laws of the Commonwealth of Pennsylvania, 1781–1790* (Philadelphia, 1793), pp. 100, 592.

[18] *Journals of the Continental Congress* (35 vols., Washington, 1904–1937), XXXV, 602, 694.

[19] John Bach McMaster, *History of the People of the United States* (8 vols., New York, 1883–1913), III, 107.

tion and intrusion," the disposition to "seize upon the public lands," he urged that unless the practice was halted and the intruders removed "their numbers may be so great as to defy the power of the United States." "The most efficient and immediate measures" should be taken to remove them; any reluctance to "inflict the calamities, necessarily attendant on an abrupt and forcible removal, of men, women and children from their possessions" would be dangerous.[20] Even southern toleration of squatting seems to have declined under the pressure of the need for revenue. But all the power and might of the government could not halt a practice followed so long by southerners as they moved westward in their search for land. Successive Congresses, Presidents, and the courts had to deal with the question and gradually gave way. In 1841, Congress abandoned the position its predecessor had taken in 1785, by sanctioning squatting anywhere on the surveyed public lands.[21]

Compromises with Revenue Policy

Despite its failure to protect the interests of the man with no money, the Ordinance of 1785 was a major step forward. It included the best features of the New England land system: prior survey before disposal, numbered townships of 36 square miles and sections of 640 acres, the public auction, the minimum price, and the grant of one thirty-sixth of the lands for schools.

Although the need for revenue was stressed in shaping the Land Ordinance, it must be noted that compromises with a straight revenue policy were made at the outset. The veterans of the Revolution had been promised generous bounties for their services and the promise had to be kept. Consequently, Congress created the United States Military Tract, an area of a million acres from which there would be no revenue. The Military Tract, the Virginia Military District, and the Connecticut Western Reserve, all in Ohio, amounted to more than a third of that state's land. These reserves not only produced no revenue for the national government, but drew settlers and other land buyers who might otherwise have gone to the areas where there was United States land for sale.[22] Finally, Congress granted a total of 85,120 acres to Canadian and Nova Scotian refugees who had sided with the American states during the Revolution, to Moravian Indian missions, and to A. H. Dohrman, a Dutchman who had given aid to American citizens abroad during the war.[23] It should also be noted that the United States could not immediately derive revenue from lands for sale under the ordinance because, unlike lands in New York and Virginia, they had to be surveyed, and that was to be a time-consuming business.

The Ordinance and Speculation

It cannot be said that the sale of land by townships was included in the Ordinance of 1785 to favor speculators. New England migration to the frontier of Vermont or Maine in the late 18th century was a group movement, and as late as the thirties and

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[20] Clarence E. Carter (ed.), *The Territorial Papers of the United States* (Vol. I, Washington, 1934—) II, 27.

[21] 5 Stat. 453. Prucha, *American Indian Policy in the Formative Years*, pp. 139–87, is excellent on the problem of intruders on Indian land.

[22] Payson J. Treat, *The National Land System* (New York, 1910), pp. 337–39, brings out that in the Virginia Military Tract 3,770,000 acres were located by holders of Virginia military bounty warrants, and warrants for 2,530,000 acres were exchanged for scrip which was subject to location on public lands elsewhere. In addition to this, Congress ceded to Ohio in 1871 the 76,735 acres in the tract that had not been exchanged for warrants. This makes a total of 6,376,735 acres which should be deducted from Virginia's cession, in addition to the 150,000 acres Virginia insisted should be set aside for George Rogers Clark and his troops.

[23] Dohrman, 23,040 acres; the Moravian Indian missions, 4,000 acres; and the Canadian and Nova Scotian refugees, 58,080 acres. W. E. Peters, *Ohio Lands and Their Subdivisions* (Athens, Ohio, 1918), pp. 212, 290, 299.

forties of the 19th century New Englanders still tended to emigrate to Illinois and Michigan in groups, after careful planning and under the leadership of a Congregational minister.[24] Those New Englanders who wished to migrate as a community preferred to buy Ohio Company or Connecticut Western Reserve Company lands where the political, religious, and cultural life was peculiarly New England in character.

As soon as the surveys were completed, the lands in the Seven Ranges were to be apportioned to the states for sale "according to the quotas in the last preceding requisition." This meant there would be public auctions in each of the Thirteen States, with the larger offerings being made in the more populous States of Virginia and Pennsylvania. To this plan George Washington objected, declaring that it tended to magnify the importance of the states and to humiliate the Confederation and that it was not an efficient or forthright way of handling the sales.[25] Before any sales were held Congress, on April 21, 1787, abolished the plan for 13 auctions and instead required that the public offering of land should be held in New York, the Seat of the Government.[26]

Sales in New York, far removed from the land, were a major hardship to the small man who was looking for a spot to improve. Indeed they were no great advantage to the capitalist investor since it might encourage him to buy land sight unseen. In periods of great speculation land was frequently bought in this way, often to the discomfiture of the investor. Invariably he found that such blind purchases included undesirable as well as good land. The canny investor who searched out land by a personal cruise, obtained the advice of able local people, looked over the surveyors' notes, and watched what other investors were doing was the most likely to succeed.

Members of Congress who were anxious to make sales and derive revenue from the public lands in effect marched the soldiers up the hill and marched them down again: the sale policy of the Land Ordinance promised to produce so little result that from the outset members of Congress maneuvered around it. The ordinance did not lend itself to the intrigues of new groups of speculators; they therefore turned to Congress to secure the land they wanted. Speculation was in the air; everyone of means, it appeared, was dealing either in securities of the Confederation and of the states, or was trying to buy wild land on the frontier from Maine to Georgia, from the Ohio country to the Yazoo Delta.[27] George Washington, himself no small speculator in land, went out to the Ohio region to look over his land investments (in western Pennsylvania and Ohio) in 1784 and reported: "Such is the rage of speculating in, and forestalling of lands on the northwest side of the Ohio, that scarce a valuable spot within any tolerable distance of it, is left without a claimant. Men in these times talk with as much facility of fifty, a hundred, and even

[24] For numerous instances see William V. Pooley, *The Settlement of Illinois from 1830 to 1850* (Madison, Wis., 1908), *passim*.

[25] John C. Fitzpatrick (ed.), *Writings of George Washington* (39 vols., Washington, 1931–44), XXVIII, 137.

[26] Treat, *National Land System*, p. 44. Other modifications of the ordinance including the introduction of indiscriminate locations were proposed in 1786 and 1787, but they were defeated.

[27] The historian of land speculation, A. M. Sakolski, has said that the "early land lust . . . was not diminished by the democratic spirit of the Revolutionary fathers. Large estates, indeed, could no longer be a badge of nobility, but the growth of colonial fortunes through land acquisitions and sales led to the belief that this would continue to be an important means toward affluence as well as political and social prestige." Sakolski, *The Great American Land Bubble*, p. 30. Robert A. East in *Business Enterprise in the American Revolutionary Era* (New York, 1938), dredged up a good deal of information concerning individual and joint stock company speculations in lands. Other useful works are Paul D. Evans, *The Holland Land Company* (Buffalo, 1924); Ruth L. Higgins, *Expansion in New York, with Especial Reference to the Eighteenth Century* (Columbus, Ohio, 1931); Shaw Livermore, *Early American Land Companies, Their Influence on Corporate Development* (New York, 1939).

500,000 acres as a Gentleman formerly would do of 1000 acres. In defiance of the proclamation of Congress, they roam over the Country on the Indian side of Ohio, mark out lands, Survey, and even settle them."[28] Among those trying to secure great tracts of land were the Yazoo land companies, Phelps and Gorham, the Holland Land Company, the Connecticut Land Company, and the Ohio and Scioto Land Companies. The success of one group in acquiring land only seemed to whet the appetites of others to outdo the first in size of purchase and volume of publicity to attract buyers.

Of the groups interested in the Ohio country, the first to show its hand was the Ohio Company. Consisting of Massachusetts men—Rufus Putnam, Manasseh Cutler, and Winthrop Sargent—the company proposed to purchase 1,500,000 acres of land below the Seven Ranges in southeastern Ohio. Approval of the purchase was not easy to secure; Cutler and Putnam found it necessary to join in support of a larger and more dubious enterprise to get anywhere with Congress. This was the Scioto Land Company which consisted of a number of members of Congress and state officials who proposed they be included with the Ohio Company in a combined purchase of 5 million acres. This enlarged plan was accepted by the Congress and the sale was made in 1787. The Scioto Company raised no money and got no land but the Ohio Company succeeded in carrying through part of its contract.

The terms of the contract with the Ohio Company were so generous that it is easy to understand why William Duer, Secretary of the Board of Treasury and a rich banker, wanted to have a share in the enterprise and to have his share kept secret. One and a half million acres were to be purchased at $1 an acre with a reduction of one-third of a dollar for poor land. Since depreciated securities of the Confederation were acceptable, the actual cost in specie would be about 8 cents an acre. The agreement stipulated that section 16 in each township should be reserved for schools and section 29 should be held "for purposes of religion," which seemed quite appropriate for a Massachusetts-based land company. More important as an example for the future was the provision that two full townships of 23,040 acres each should be set aside for a university. Congress reserved to itself three sections in each township.[29] The Ohio Company was essentially a colonizing company devoted to settling soldiers of the Revolutionary War and others from New England on its lands. It was not able to carry through the full purchase for which it had contracted but it did acquire more than a million acres. Its settlers became an outpost of New England culture and federalism.

The early success of the Ohio Company in buying its tract led other speculatively inclined capitalists to gain a share of the public domain on the same liberal terms. One group that included George Morgan, Aaron Burr, William Newbold, and Oliver Pollock, among others, offered to buy 2 million acres bordering on the Mississippi. Garret Rapalje, John Ward, Royal Flint, and Joseph Ward each asked for a million acres west of the Seven Ranges. John Cleves Symmes first asked for

[28] George Washington, Mount Vernon, to Jacob Read, November 3, 1784, Fitzpatrick, *Writings of George Washington*, XXVII, 486. In this letter Washington expressed his view as to the way in which United States public lands should be handled. "Fix such a price upon the Lands," he urged, "as would not be too exhorbitant and burthensome for real-occupiers, but high enough to discourage monopolizers." All steps taken to acquire ownership in land north of the Ohio (which up to 1784 were contrary to the prohibition of Congress) should be null and void, and squatters who should intrude on lands closed to them and still held by the Indians, should be considered as outlaws, "fit subjects for Indian vengeance." His lands on the Great Kanawha and Ohio Rivers amounted to 32,373 acres for which he offered to take 30,000 English Guineas. Washington to H. L. Charlton, Mount Vernon, May 20, 1796, *ibid.*, XXVIII, 437.

[29] Archer B. Hulbert, *The Records of the Original Proceedings of the Ohio Company* (2 vols., Marietta, Ohio, 1917), I, 14.

2 million, then a million acres between the Great and Little Miami Rivers. In addition, the Scioto Company still hoped to acquire 3,500,000 acres; the Connecticut Company had acquired 3,800,000 acres in the Connecticut Western Reserve; and two New Jersey groups were preparing to make an offer each for 2 million acres in the Ohio Country.[30] Had all these groups been able to carry their plans through, a substantial part of the Federal debt would have been retired and there would have been very little government land left in Ohio. Instead of the United States being the principal dispenser of land under the Ordinance of 1785, there would have been a series of land companies bidding for purchasers. As it was, the United States found little demand for its land from small purchasers, as southern opponents of the ordinance had predicted, and the principal areas of settlement were those being advertised by the Ohio and Connecticut Companies and by the Symmes associates.

Various obstacles prevented a number of the land companies from carrying to completion their offers to purchase land; chief of these was the fact that Indian titles to some areas the land companies wanted had not been extinguished. Also, after Hamilton's fiscal reforms were introduced, the rising market value of the Nation's securities gradually diminished the advantage in using them to meet payments on land. The Scioto Company was a complete failure, though this did not become clear before its agent abroad had persuaded a group of Frenchmen to leave their homeland for the lush Ohio country, there to find that they had been deceived; there were no lands waiting for them.

Only John Cleves Symmes of the new adventurers in land succeeded in negotiating for himself and a group of New Jersey associates a purchase of a million acres extending north from the Ohio River between the Great and Little Miami Rivers. Symmes was a poor businessman. His accounts were badly deranged and he sold land before he had title, and tracts to which he had no title. He had been too optimistic about collections, was not able to meet his obligations and, though generously treated by the government, fell into increasing difficulties until his creditors had to take over his property. Instead of the one or two million acres that he had dreamed of developing, 311,682 acres were patented to him and his associates. Although the Congress of the Confederation struck out of the Land Ordinance provision for reserving a section in each township for religion, section 29 was reserved for this purpose in the Symmes purchase. Section 16 was also reserved for schools and sections 8, 11, and 26 were reserved for future disposition.[31] Though the Symmes land settlement business was anything but a financial success, there had been established a growing community, the most populous in the Northwest, which was to be a center of political, economic, and cultural activity thereafter.[32]

All these settlements—Marietta, the center of the Ohio Company activities; Losantiville (later Cincinnati) in the Symmes purchases; Chillicothe, a developing center in the Virginia Military Tract; and scattered settlements of squatters in the Seven Ranges—were retarded in their progress by dangers of Indian warfare. As has been seen, many settlers withdrew and abandoned their land during the Indian troubles. After 1795, however, the way was cleared for the settlement of most of Ohio.

[30] Beverley W. Bond, Jr., *The Correspondence of John Cleves Symmes* (New York, 1926), pp. ii, 26, 204–205. Nicholas Gilman, a New Hampshire delegate to Congress, wrote to John Sullivan on October 31, 1787 (Burnett, *Letters of Members of the Continental Congress*, VIII, 670): "The sale of the Western lands is going on very well; what is already sold and applied for will amount [to] Seven Million dollars—and if North Carolina and Georgia should make such Cessions as might be expected, it is supposed there will be public lands enough to absorb the most, or perhaps the whole of the domestic debt."

[31] Copy of patent to Symmes in *Territorial Papers*, II, 496.

[32] Bond, *Correspondence*, pp. 8 ff.

The Northwest Ordinance of 1787

In the territory the Ohio Company and the enlarged Scioto Company had proposed to settle, the need for a government made necessary the establishment of a territorial policy. Jefferson's Ordinance of 1784 had not been placed in operation, as has been seen, since all the states had not then ceded their claims. There was marked opposition to the ordinance because of the artificial character of the territorial boundaries it proposed and because it allowed the people of the territories self-government without delay.

By virtue of the cessions (with the exceptions previously noted), the United States had come into possession of all the land south of Canada, north of the Ohio, west of Pennsylvania, and east of the Mississippi. Maryland, Delaware, and New Jersey had insisted that control over these lands should be guaranteed to Congress. This insistence was undoubtedly related to the question of title to these lands but below the tangible issues there lurked a problem of a more fundamental nature: the validity of the cessions as they were related to the power of the Confederation Congress to accept them and to legislate concerning them. Thus, for example, although Virginia had conceded power to the Congress to govern the territory north of the Ohio, the power was wanting in the Articles of Confederation to admit any new states into the Union. As a consequence, although technically the Northwest Territory was to be disposed of for the benefit of all the states, in a geographic and economic sense, the greater part of this area remained tied to Virginia politically until some legal way could be found for forming and admitting new states.

In 1787 the Congress of the Confederation replaced the Ordinance of 1784, which would have given self-government to the people in the territory at the outset, with the Northwest Ordinance that provided three stages of government before the people of the territory could enjoy the same political privileges as the other states. In the first stage, authority was to be exercised by appointees of the national government; in the second, it was to be shared by these appointees and a representative assembly with the governor still appointed by the President; and in the third stage, the state was to be admitted to the Union on equality with the old states, after drafting its own constitution, creating its own machinery of government, and determining the qualifications for voting and holding office.[33]

Without express authority, the Congress of the Confederation assumed the power not only to dispose of the ceded lands, but to institute governments, make laws for their inhabitants, and admit new states. It acted under the cessions, which granted jurisdiction as well as the soil to the United States, and provided for the government of the territory by the Northwest Ordinance while the Constitutional Convention was in session in Philadelphia and while the problem of creating and admitting new states was still under discussion. In notifying Washington of the adoption of the ordinance, Richard Henry Lee explained the step was taken "preparatory to the sale of the lands. It seemed necessary, for the security of property among uninformed, and perhaps licentious people as the greater part of those who go there are, that a strong toned government should exist, and the rights of property be clearly de-

[33] Donaldson, *The Public Domain*, pp. 155–56.

Edward Carrington, Virginia delegate to the Congress, writing to Jefferson, October 23, 1787, said: "The Western Territory belonging to the United States has more effectually received the attention of Congress during this session than it ever did before. inclosed you will receive the ordinance for establishing a Temporary government there, and providing for its more easy passage into permanent state governments. under the old arrangements the country might upon the whole have become very populous, and yet be inadmissable to the rights of state government, which would have been disgusting to them and ultimately inconvenient for the Empire." Burnett, *Letters*, VIII, 660.

fined."[34] The ordinance aroused some apprehension since its passage was understood to be beyond the legitimate powers of the Confederation.[35]

Constitutional Provision for New States

The problems posed by the existence of the western lands, the formation of new states, and the questionable legality of acts of the Congress of the Confederation concerning the public lands were of utmost importance to many of the delegates of the Constitutional Convention. A partial solution was offered early by Edmund Randolph of Virginia on May 29, 1787, 4 days after the delegates had convened.[36] A resolution made on his suggestion proposed that "provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory or otherwise, with the consent of a number of voices in the national legislature less than the whole."[37] On June 5, 1787, this resolution was passed in the Committee of the Whole.[38] On June 13, it was reported to the Convention, and was referred to the Committee of Detail (which had been appointed to prepare the first draft of the Constitution) on July 26. The Committee reported an article for the admission of new states which provided for the admission into the Union of "lawfully constituted or established" new states, with the approval of two-thirds of the members of both Houses of Congress. States arising within the limits of existing states required the approval of the legislatures of those states. New states would be admitted on the same terms as the Original States, but the legislature of the state out of which a new state was to be carved "may make Conditions with the new States concerning the public Debt, which shall be then subsisting."[39] This draft contained the essential features of Article IV, Section 3, clause 1 of the Federal Constitution as it was finally approved.

It is noteworthy that in the preliminary draft of the Federal Constitution nothing was said concerning the power of Congress to prepare or form states whose admission was thus being provided for. This omission struck James Madison who, on August 18, submitted for referral to the Committee of Detail several "powers as proper to be added to those of the General Legislature." The first of these additional powers would be "To dispose of the unappropriated lands of the U. States," the second being "To institute temporary Governments for New States arising therein."[40] Madison's proposals rested with the Committee of Detail as the Convention debated, then resolved, other provisions of the constitution throughout the hot days of August.

On August 29, Article XVII of the draft constitution (the present Article IV, Section 3) was taken up. One provision, also in the Articles of Confederation, empowered the Senate to adjust and decide "all controversies concerning lands claimed under different grants of two or more States . . ."[41] After much argument it was eliminated. Gouverneur Morris of Pennsylvania moved to strike out the last two sentences of the draft article, to wit: "If the admission be consented to, the new States shall be admitted on the same terms with the original States—But the Legislature may make conditions with the new States, concerning the public debt, which shall be then subsisting." He added that he

[34] Letters of Richard Henry Lee of July 15, 1787 to Washington and of Washington to Lee of July 19, 1787, Burnett, *Letters*, VIII, 620 and Fitzpatrick, *The Writings of George Washington*, XXIX, 249.

[35] H. A. Washington, *The Writings of Thomas Jefferson* (9 vols., Philadelphia, 1869–71), IX, 251, 276.

[36] Max Farrand, *The Records of the Federal Convention* (3 vols., New Haven, 1911), I, 16.

[37] *Ibid.*, I, 117.

[38] *Ibid.*, I, 237.

[39] *Ibid.*, II, 173.

[40] *Ibid.*, II, 324.

[41] *Ibid.*, II, 171–72.

did not wish "to bind down the Legislature to admit Western States on the terms there stated."[42] Morris, who was to be the guiding hand in the formation of Article IV, Section 3, beheld the West as a spectre that could destroy the government established by a more "enlightened" East. On July 11, he had said that "they [the westerners] would not be able to furnish men equally enlightened, to share in the administration of our common interests. The busy haunts of men, not the remote wilderness, was the proper School of political Talents." He warned that "If the Western people get the power into their hands they will ruin the Atlantic interests," alleging that "The Back members are always most averse to the best measures." He mentioned the case of Pennsylvania before it had adopted a more democratic constitution, saying that the "lower part of the State had the power in the first instance. They kept it in their own hands and the country was the better for it."[43] Judging from these statements, Morris would have preferred to exclude the West from the Union perpetually. Notwithstanding his views, Morris redrafted what became in slightly changed form Section 3 of Article IV of the Constitution:[44]

> New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The small states, under the leadership of Charles Carroll of Maryland who had previously tried to strike out the clause requiring consent of a state to its being divided, made a final attempt to assure that the western lands would be vested in the United States and not retained by any individual state. He proposed a clause stating "that nothing in this Constitution shall be construed to affect the claim of the U.S. to vacant lands ceded to them by the Treaty of Paris."[45] This and a modification of it were quickly displaced in consideration by Gouveneur Morris' action in moving what is essentially Article IV, Section 3, clause 2:

> The Legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the U. States; and nothing in this constitution shall be so construed as to prejudice any claims either of the U.S. or of any particular State.

Maryland alone dissented from this action.[46] The Constitution was put into force upon ratification by New Hampshire as the ninth state in 1788, but for much of that document volumes of explanation of the legal meaning of its provisions lay in the future. Many difficult cases were to arise, requiring the Supreme Court to interpret the scope and effect of its provisions, not the least of which was the power conferred upon Congress "to dispose of and make all needful Rules and Regulations respecting the Territory . . . belonging to the United States."

While the Convention was drafting the Constitution in Philadelphia, the Confederation Congress sitting in New York included in its last great act, the Northwest Ordinance, a number of provisions restricting the powers of the new districts or states over the public domain of the United States. Legislatures were never to interfere "with the primary disposal of the soil by [of] the United States . . . nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers." No tax was to be "imposed on lands the property of the United States," and nonresident owners were to be taxed no higher than residents. In the Enabling Act of April 30, 1802, providing for the admission of Ohio, the first public land state, none of these features was included, perhaps because Congress thought the limitations in the Northwest Ordinance sufficiently binding.[47]

[42] *Ibid.*, II, 454.
[43] *Ibid.*, I, 583.
[44] *Ibid.*, II, 455.
[45] *Ibid.*, II, 461, 465.
[46] *Ibid.*, II, 466.
[47] 2 Stat. 175.

CHAPTER V

Acquisition of the Public Domain

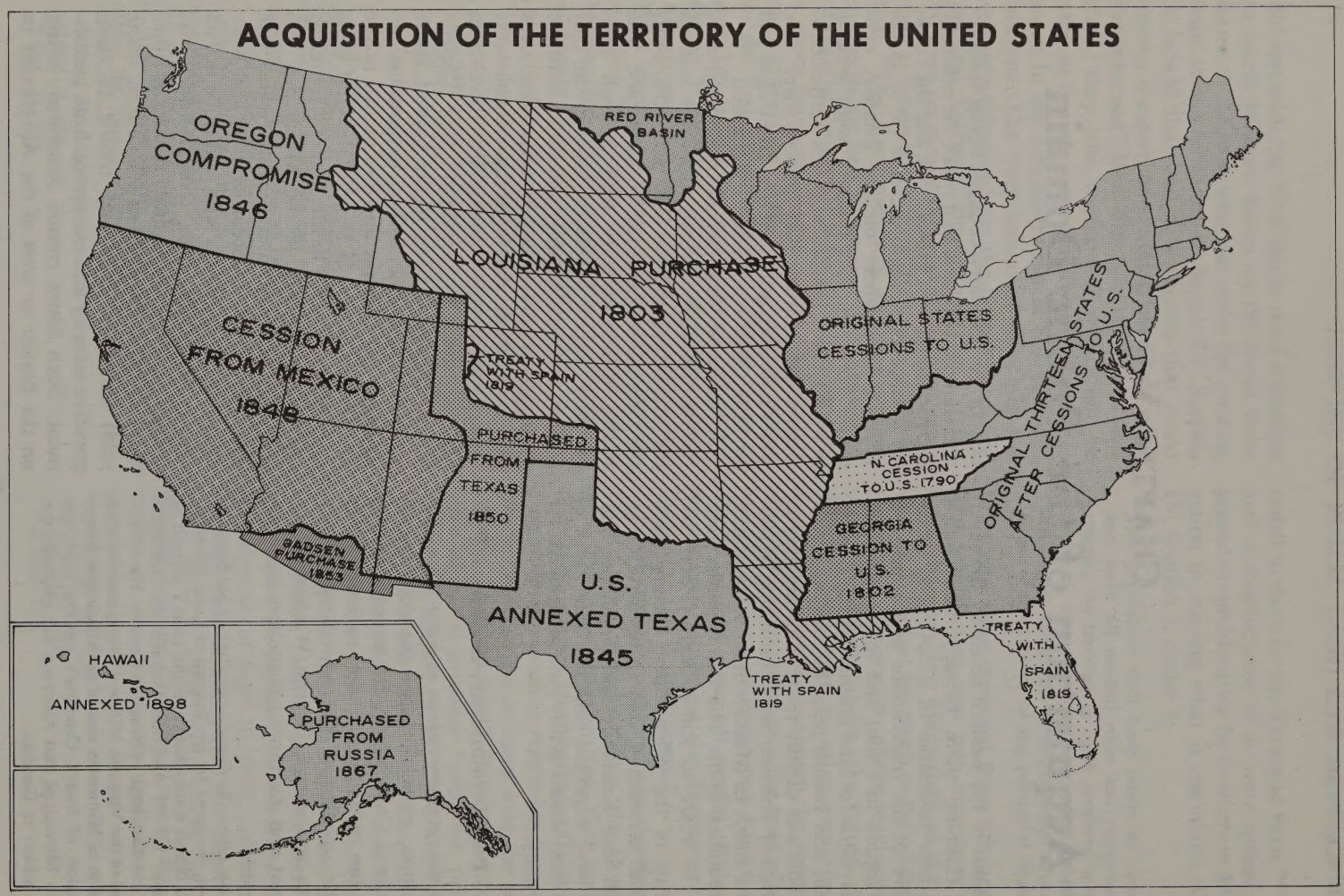
Cessions of the western lands by the seven states claiming them brought the United States into possession of 233,415,680 acres, exclusive of the reservations of Connecticut and Virginia in Ohio, and inclusive of numerous claims for land granted by the French, Spanish, and British prior to American control.[1] This was slightly more than the area of the Original Thirteen States (omitting Massachusetts' lands in Maine). Since it had taken the population of the Thirteen Colonies more than 170 years to spread lightly over the area east of the Alleghenies, leaving great areas still untouched, and to begin to break through into Kentucky and Tennessee, one might have expected that this huge area of public land would satisfy American needs for many years.

Post-Revolutionary Growth

But the country grew rapidly after the Revolution, especially after the adoption of the Federal Constitution, the enactment of a tariff, the refunding of the national debt, and the opening of the new lands in the West to settlement. George Washington as President and Alexander Hamilton as Secretary of the Treasury brought about stability and sound credit, and as a result the economy experienced a high growth rate and the country a large population increase (35% in the 1790's). Everywhere on the frontier, emigrants from the older states were seeking new lands and establishing new settlements. Before the century had passed three new states had been admitted into the Union and by 1803 Ohio was ready for admission.

In this new West beyond the Alleghenies, the natural flow of goods to market was via the Mississippi and the Gulf of Mexico or by the Great Lakes and the St. Lawrence. The routes to market were thus through alien territory, lightly developed and, in the case of New Orleans, Mobile, and other southern ports, lightly held. Many Americans had been disappointed at the failure to acquire the "fourteenth colony" during the Revolution and continued to anticipate that Canada might fall into the lap of the United States at some future time. Others dreamed of acquiring New Orleans and the mouth of the Mississippi, as well as Mobile, the Gulf territory of Spain, and Florida, thereby rounding out the region east of the Mississippi. Restrictions on trade and deposit (transfer of goods from river to ocean vessels) and petty annoyances by officials who had to be bribed caused ill feeling. Also, these border areas provided refuges for runaway slaves and other fugitives, and for Indians who could make raids across the line and return to comparative security and exemption from punishment. Such issues caused Americans living on the border or west of the Alleghenies to

[1] I have taken the figure from *Public Land Statistics, 1964*, p. 4, prepared by the Bureau of Land Management. It differs somewhat from the total I arrived at in Chapter III. It doubtless excludes the 3,800,000 acres of the Connecticut Western Reserve, the 4,204,000 acres of the Virginia Military Tract, and includes the portion of Minnesota east of the Mississippi River, the portion of South Carolina's cession that was added to Mississippi and Alabama but excludes the portion added to Georgia.



Acquisition of the Territory of the United States

Prepared by the Bureau of Land Management

desire additional territory, perhaps more to rid themselves of annoyances than to add more land. It was not Canada or Florida, however, that was the first to fall to the United States, but Louisiana.

The portion of Spain's huge possessions that Americans lusted for was New Orleans where, if the right of deposit was withheld, serious harm would be done the frontiersmen. When John Jay tried to secure other concessions from Spain and showed a willingness to surrender the right of navigation of the Mississippi—both of whose banks were controlled by Spain—there was angry dissent in the West, talk about withdrawal from the Union, and possibly treasonable discussions with Spanish authorities. Finally, in 1795 the Pinckney Treaty was ratified by both countries: the United States won the right of navigation of the Mississippi through Spanish territory and also secured recognition of its southwest boundary at the 31st parallel. The frontiersmen breathed peacefully again for a time, but not for long. In 1800 Napoleon, dreaming of world conquests and a huge intercontinental empire, induced Spain in the Treaty of San Ildefonso to cede Louisiana —including New Orleans and the territory to the Rocky Mountains—to France.

Louisiana Purchase

Spain's control of the Louisiana Territory and New Orleans had not proved altogether harmful to settlers in the trans-Allegheny country. It had been easy to secure concessions from Spain and there seemed to be little reason to worry about control of the mouth of the Mississippi. But with France in control and Napoleon in the saddle the situation changed over night. France could block American progress westward and could cast a blight over the development of the trans-Allegheny country. Furthermore, in 1802 before the transfer was made, Spain had ordered the closing of the Mississippi to American ships. Though revoked after American protests, the transfer of the territory to France and the order closing the river together constituted one of the greatest menaces the young Republic had faced since the conclusion of the Revolution. Jefferson dispatched representatives to negotiate for the purchase of New Orleans, East or West Florida or both, and perhaps a part of Louisiana. The results were not promising until a turn of events in Europe and the terrible losses the French Army suffered from disease in Santo Domingo induced Napoleon to change his plans and to offer for sale the entire Louisiana Territory including New Orleans. The territory involved was so large that it would change the nature of the Union and Jefferson seriously doubted whether he ought to accept the offer without first securing an amendment to the Constitution authorizing the acquisition. This, however, would take time and quick action was necessary. Jefferson realized that the acquisition would arouse profound concern and indeed strong objection in some parts of the country, notably New England, but he was too good a statesman to allow his doubts and the fear of sectional discord to permit the opportunity to be lost.

Thus fortuitously a grave danger was turned into a great diplomatic and political victory. For 3 cents an acre, 523,446,400 acres were added to American territory, just about doubling the national area. An American resident in New Orleans at the time commented, "It is astonishing while the nations of Europe are destroying thousands of men & wasting millions of treasure for trifling spots of ground our government has in a few days and for a comparatively small sum of money purchased a tract of country nearly as large as Europe. . . . This great event surpasses the expectations of the most sanguine American among us."[2]

[2] Benjamin Morgan to Chandler Price, Aug. 11, 1803, in C. E. Carter, *The Territorial Papers of the United States*, IX, 8. Arthur P. Whitaker has two important books on the events leading to the purchase of the Louisiana Territory: *The Spanish-American Frontier: 1783–1795* (Boston, 1927), and *The Mississippi Question 1795–1803* (New York, 1934). Also see Samuel Flagg Bemis, *A Diplomatic History of the United States* (New York, 1950), *passim*.

New England Federalists had been quite content with the administration of Washington and Adams (their own man) and with the fiscal policies of Hamilton. They were most unhappy, however, with the election of Jefferson and the continued antagonism of the Republicans toward England. They were deeply disturbed by the growth of the new West, the admission of new states and the presence of their new radical Representatives in the Congress. It was bad enough to have Vermont and Kentucky—both representing the spirit of the frontier—enter the Union in 1791 and 1792 respectively, but it was worse to have Tennessee, a second new slave state, enter in 1796 and then Ohio in 1803, as a free state, but one with political principles closer to those of Jefferson and Virginia than to those of Adams and Massachusetts. Then came the sudden purchase of Louisiana, a territory that could be divided into additional states, satellites to the South, and peopled by its surplus population.[3] This was too much for New England. Not yet realizing that it was to play a powerful role in developing the West and that its leaders were to have great political influence in that area, New England was becoming increasingly disillusioned with the Union and fearful that its own influence would be swamped by new, radically oriented states. The treaty with France providing for the purchase of the Louisiana Territory was ratified by an overwhelming vote, but seven Senators voted in opposition: two from Connecticut, two from New Hampshire, one from Massachusetts, and two from Delaware. The same minority led the fight in opposition to the measure to appropriate funds for the purchase.[4]

In fact, New England had little reason to fear the creation of new states out of the Louisiana Purchase. For years the bulk of the people moving westward were content to take up land east of the Mississippi. True, Louisiana was admitted in 1812 and Missouri in 1821 with barely sufficient population to meet requirements, but not until 1836 and 1846 were other states carved out of the Louisiana Purchase ready for admission. Long before then New England was sending its own surplus population and, equally important, investment funds to new western communities which assimilated her political and social views.

By the retrocession of Louisiana to France, Spain lost the most valuable part of its empire north of the Rio Grande and took on additional boundary disputes with the United States both on the western and eastern borders of Louisiana. Americans had some justification for claiming that the Purchase included that portion of Florida bounded by the Perdido River on the east and all the Gulf Coast, now a part of Mississippi and Alabama, and that it extended to the Rio Grande on the west. Both claims were adopted by Jefferson and disputed by Spain. The Spanish position was not aided by the growth of population in Georgia and the movement of settlers into Mississippi Territory. A restless, sometimes lawless, landgrabbing people who had little respect for the weak government below the line were coming close to East and West Florida. Moreover, Spanish officials had earlier invited Americans and other immigrants into Florida, and had thereby gained an undependable population.

While maintaining America's right to West Florida, Jefferson was careful not to push the issue to war but sought to purchase all of East and West Florida. Spain refused to give way, but events in Europe in 1810 encouraged the population of West Florida to revolt against the weak Spanish authority, and the predominantly American population of Baton Rouge overthrew the local government, declared their independence, and requested annexation to the United States.

[3] *Geological Survey Bulletin 1212, Boundaries of the United States and the Several States* (1966), is useful for its swift account of acquisitions of territory by the United States and of national and state boundary questions.

[4] The Senators from Vermont and Rhode Island voted for ratification. *Senate Executive Journal*, I, 450; *Annals of Congress*, 8th Cong., 1st sess., p. 74. Also see John Bach McMaster, *History of the People of the United States* (8 vols., New York, 1883–1913), III, 42ff.

Madison promptly took possession of the territory and extended American control to the Perdido River. Meantime, claims against Spain were accumulating for alleged unneutral acts damaging American property. More important was the long-sustained tension, which reached a high point in 1817 and 1818, over trade and Indian raids. Spanish officials could do nothing to maintain respect for their borders. Creek Indians, hopeful of regaining lost territory north of the line and encouraged by English residents, made destructive raids. Andrew Jackson, acting under a general authority to end the Indian menace, crossed swiftly into Florida, defeated the Indians and destroyed a number of their villages, captured two British subjects accused of inciting the Creeks and, after a drumhead court-martial, had them executed.

Florida Acquisition and Spanish Claims

John Quincy Adams, as Secretary of State in 1818 and 1819, pressed the Spanish officials to cede Florida, at the same time showing some inclination to compromise on other issues. Though Jackson's arbitrary actions did little to soothe Spanish feelings, it was clearly impossible for Spain to retain a territory whose Indian inhabitants it could neither control nor protect from the hostility of advancing Americans. Spain accepted the inevitable, agreeing to surrender all of Florida, East and West, to the United States. Both sides consented to abandon the claims of their nationals against the other and the United States undertook to pay claims of its citizens against Spain to the amount of $5 million. This, in effect, was the cost of Florida. The weak claim of the United States to Texas was surrendered in return for the cession of all Spanish claims to the Oregon country. Spain accepted as the border of its Mexican possessions the Sabine River to the 32d parallel, thence north to the source of the Arkansas River, then north to the 42d parallel and along that to the Pacific.

Continuing Land Hunger

One of the two northern boundary disputes which had remained unresolved since 1783 was brought to a successful conclusion in 1818 when the United States and Great Britain agreed to extend the border separating the British and American possessions from the northwest point on the Lake of the Woods to the 49th parallel and thence west to the Rocky Mountains. By this convention the United States gained final acknowledgment of that rich portion of the Red River Valley south of the 49th parallel and surrendered any right it may have had to a portion of the watershed of the Missouri north of the parallel.[5] The other dispute over the Maine boundary was settled in 1842 by the Webster-Ashburton Treaty which divided the disputed territory but added no public domain to the United States.

The addition of 43,342,720 acres of Florida land did not appear important at the time, for the best of the land, as then valued, was in private land claims (at least 6 percent) and the balance was to go begging for years. In fact, it was not until long after the Civil War that there appeared any major interest in Florida lands, and the state was the most laggard in building up its population. The significance of the acquisition of Florida was that it eliminated another Old World power from the area east of the Mississippi and it added greatly to American pride and confidence in the future.[6]

Florida was balm to the wounded feelings of nationalists or "War Hawks" who had precipitated the War of 1812 partly to bring about the conquest of Canada. Not only had the Canadians (many of them

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[5] Samuel Flagg Bemis, "Jay's Treaty and the Northwest Boundary Gap," *American Historical Review*, XXVII (April 1922), 465–84; Clarence A. Alvord, "When Minnesota was a Pawn in International Politics," *Minnesota History Bulletin*, IV (August 1922), 308–330.

[6] Julius W. Pratt, *History of the United States Foreign Policy* (Englewood, N. J., 1955), *passim.*

emigrants from south of the line) shown little interest in being acquired by the United States but they had whipped American forces in a number of major engagements, driven them back, and taken possession of the Illinois country. When the War was over, the United States delegates at Ghent could feel lucky that peace could be obtained without territorial concessions.

One might have assumed that the Louisiana Purchase and the acquisition of Florida would have satisfied the land hunger of Americans for quite a time. Yet long before the Indians had been removed from all but a small part of these great areas, and before the lands were surveyed and opened to settlement, Americans were looking elsewhere for additional territory. While some of the world's richest prairie land located in Iowa, Minnesota, and eastern Nebraska was untouched by white settlement and while millions of acres of potentially productive cottonland in the South were going begging, Marcus Whitman and Jason Lee were leading settlers to remote Oregon (1835–45), Stephen F. Austin and other empire-builders were establishing colonies in Texas (1822–36), and a few Americans were acquiring imperial ranchos in California. By the 1840's Brigham Young and the Saints were moving into one of the most inhospitable regions of the continent in their search for "a place" where they could enjoy freedom of religion and which they could develop according to their own ideas of community life. Extension of the frontier by these men eventually added to the United States Texas with its 246,776,000 acres, of which 78,842,880 became part of the public domain; 180,644,480 acres in the Oregon country (present day Oregon, Washington, Idaho, and part of Montana); and 334,479,360 acres in California and the Interior Basin. Together with the Gadsden Purchase of 1853, there was then added to the area of the United States in a short period—from 1845 to 1853—780,963,360 acres of which 612,928,640 acres were public domain.

Texas Independence and Delayed Statehood

Mexico, once it had gained its independence, welcomed American immigrants, promising huge tracts of land to promoters who would contract to bring in a certain number of settlers. In 1820 it entered into an agreement with Moses Austin, later confirmed to Stephen Austin, whereby he was to have a 200,000-acre tract in Texas on which he agreed to colonize 300 families. Each settler who made specified improvements, including building a home and putting land into cultivation, was to have 640 acres, 320 acres for his wife, 160 acres for each child, and 80 acres for each slave. For promoting settlement and surveying the land Austin was to receive 12½ cents an acre. While settlers were being brought in, Mexico adopted two colonization laws in 1823 and 1825 which provided for a general policy of colony promotion. Under the Act of 1823 "empresarios," or colony promoters, were offered 65,000 acres for each 200 families they introduced; each family thus colonized was to be given a *labor* (177 acres) of cultivable land and cattle ranchers were to have an additional 24 *labors*, or a square league of 4,428 acres. Compensation was reduced from the 12½ cents an acre that Austin had demanded for promotional work and surveying, "to $30 for a league, $3.50 for a *labor* of irrigable, and $2.50 for a *labor* of non-irrigable land." Families immigrating to Texas independently were allowed one-fourth as much land in addition. All grants could be augmented for large families or for special services. Improvement requirements were included.

Under the Colonization Act of 1825, empresarios were allowed as compensation 5 leagues of grazing land and 5 *labors* of farmland for every 100 families—up to the maximum of 800 families—brought into Texas. Thus they could earn 22,140 acres of grazing land and 885 of farmland for each 100 families, or—the maximum allowed by law—177,120 acres of grazing land and 7,080 acres

of farmland for 800 families. Contracts of the empresarios were to run for only 6 years and were to be cancelled if 100 families had not been settled within that length of time.

In addition to its very liberal empresario system the Mexican Government permitted immigrants to purchase land by the league up to 11 leagues, at $100 per league for pastureland, $150 for nonirrigable farmland, and $250 for irrigable farmland. This was at the rate of 2.5 cents to 5.6 cents an acre. The United States had just reduced the price of its land from $2.00 to $1.25 an acre, which had to be paid in cash on the day of sale. Many westerners looking for land regarded the new price as still altogether too high, particularly in view of economic conditions of the time, the financial panic of 1819, the failure of many banks, the great letdown in the economy of the country, tight money, and unemployment. News of the extraordinarily generous terms being offered in Texas excited much attention, especially in Mississippi, Alabama, Louisiana, and Missouri. People left their occupations and swarmed to the new "el dorado." Fifteen men took on the role of empresario, contracted to settle 3,050 families, and became boosters for emigration to Texas.[7]

By 1830 there were 20,000 persons of American birth with their 1,000 slaves in Texas. Their disinclination to accept Mexican rule was causing Mexican officials deep concern and made them regret their invitation to Yankee immigrants. The Mexican Government tried to outlaw slavery, to compel membership in the Catholic Church, to centralize authority in the national government, and halt American immigration. All this produced opposition and finally, in 1835 and 1836, revolution. Fired by the tragedy at the Alamo, Texans fought to the finish, defeated Santa Anna at San Jacinto, and compelled the recognition of their independence.

[7] Eugene C. Barker, *Life of Stephen F. Austin* (Nashville, Tenn., 1925), pp. 62–72, 136–38.

To the astonishment of Texas, the United States was not ready to admit her into the Union and from 1836 to 1845 the newly independent state had to cool its heels outside. This unexpected development was due to a revival of the controversy over slavery. Antislavery forces had won a major victory in Congress in 1820 by inserting in the Enabling Act for the admission of Missouri a provision that no additional slave states north of the line 36°30′, other than Missouri could be carved out of the Louisiana Purchase. By this act there seemed to be no opportunity for the creation of more than two additional slave states (Florida and Arkansas), whereas the North had opportunity for several new free states—present Michigan, Wisconsin, Iowa, Minnesota, Kansas, Nebraska, and the Dakotas. The acquisition of Texas, which claimed an area 46 times as large as Massachusetts and six times as large as New York, could greatly change the picture. Five or six states might be created out of it.[8] Antislavery forces charged that it was an aggressive slavocracy that had planned, colonized, and won the independence of Texas to add it to the Union and to advance the cause of slavery. Jackson, fearing the effect such charges would have on the election of Van Buren to succeed him, cut off action on the request of Texas. Unwillingness to annex Texas for nearly 10 years, however, should not be regarded as an indication that the concept of Manifest Destiny, the expansionism of Jefferson, and the desire to press forward American claims to additional territory had come to a halt.[9]

Texas, like the Confederation after 1783, was hard put to carry its revolutionary war

[8] I have borrowed the statistics from *Public Land Statistics, 1964*, pp. 3–4. Donaldson, *The Public Domain*, pp. 12, 124, makes the area of present day Texas to be 175,587,840 acres and the cession of 1850 to be 61,892,480, or a total of 237,480,320 acres.

[9] Chauncey S. Boucher, "In Re that Aggressive Slavocracy," *Mississippi Valley Historical Review*, VIII (June 1921), 13–79.

debt and to meet its current obligations. It sold scrip—land office money—at 50 cents an acre and granted enormous amounts of land to soldiers for military service and headrights to incoming immigrants. It is estimated that altogether during the years of Texan independence 30 million acres were granted. But Texas could not find the resources to dispose of its burdensome debt. Five years after annexation, it sold to the United States 78,842,880 acres of its western lands for $10 million (the total sum paid Texas for its land cessions was $15,496,448), thereby retiring its debt and adding to the territories that became New Mexico, Oklahoma, Wyoming, Colorado, and Kansas.[10]

Had not slavery and other divisive political issues intervened, Texas would undoubtedly have been brought into the Union earlier than 1845. Whig opposition and the continued fear of New England that the progressive advance of the population into the Southwest might seriously damage its position and influence in the Nation for a time strengthened the forces in opposition to annexation. However, when it appeared that the British preferred independence for Texas, and when California was proving seductive to some Americans, Texas gained friends. The election of 1844, though very close, was a victory for expansion. Sensing the support for annexation, John Tyler succeeded in getting Congress to adopt a joint resolution to provide for annexation on March 1, 1845, and on December 29, 1845, Texas became a State in the Union.[11]

Not even colonial Virginia with its huge claims to land north of the Ohio River in addition to present West Virginia and Kentucky had controlled as large an area as Texas at the time of its annexation. Perhaps an eighth of its land had been granted away by 1845, but there still remained over 200 million acres of public land that the act of admission specifically stated should be retained by Texas.

It is natural to inquire why the Lone Star State was permitted to retain its enormous public domain when in the 1780's the United States had repeatedly and successfully urged the states to cede their western lands to the Nation. The land system of Texas, as of 1836—somewhat less so by 1845—was based on Spanish law. To make it conform to Anglo-Saxon land law would involve difficulties, but these had been overcome in Florida and Louisiana and would surely be no more of a task in Texas. When the United States was trying to induce the states to cede their western land claims it was desperately in need of funds, whereas in 1845 the government enjoyed a substantial surplus of income over outgo, and the debt was little more than that of Texas and in no sense a burden.[12] Probably the chief reason it was deemed wise to leave the public lands to Texas was that it had been a free state for nearly 10 years. During this time it had retained and managed its public lands and developed its land office; the lands had not yielded as much as had been expected to aid in financing the state's current obligations and in retiring its debt, but its officials were optimistic that in the future they would bring in large returns to the government. The Texas debt had become widely held by people in various walks of life. To assume those debts would have involved the Federal government in an intimate investigation of the administration of the various Texas agencies during the 10 years of independence. This would have been a formidable task in itself, and most inexpedient to have under-

[10] Henry Cohen has an illuminating chapter on the background of the move of the Federal government to buy a portion of the public lands of Texas and to aid the state in paying its public debt in "Business and Politics from the Age of Jackson to the Civil War: A Study from the Life of W. W. Corcoran" (Ph.D. dissertation, Cornell University, 1965), pp. 268 ff.

[11] Frederick Merk, *Manifest Destiny and Mission in American History* (New York, 1963), pp. 38–46; Donaldson, *The Public Domain*, pp. 120–25.

[12] The surplus for 1845 was $7,033,000 and the debt was $15,925,000. *Historical Statistics* (Washington, 1957), p. 711.

taken, because of the many shady and questionable tricks of finance to which Texans had been compelled to resort. By leaving the lands in the possession of Texas, the burden of financing the debts could also be left to it.[13]

Texas not only retained its huge supply of public lands (from which, as has been seen, it sold a part to the United States) but it was also to share generously in Federal public lands elsewhere. Under the Morrill Land Grant Act for the aid of agriculture colleges, Texas was given scrip for 180,000 acres which, when sold, could be used to acquire public lands anywhere they were open to cash or preemption entry. This netted the state $156,000 for its A & M institution, a sum greater than some other states received.[14] In 1887 Texas was promised $15,000 annual income from Federal land sales for the establishment of an agricultural experiment station. Then in 1890, the second Morrill Act made available to each state out of public land revenues $15,000, to be increased by $1,000 annually for the next 10 years, for the A & M institutions. Furthermore, in common with all states Texas has drawn its share of benefit from the $175 million the Federal government received from its public land sales before Congress provided that the bulk of the income should go into reclamation development.

Treaty of Guadalupe Hidalgo

Annexation shifted responsibility for maintaining the Texas boundary dispute with Mexico to the United States. We need not enter deeply into the involved controversy concerning the western boundary of Texas, except to say that Mexico's claim to the Nueces River is generally regarded as superior to that of the United States to the Rio Grande. Texan and national feelings were deeply involved in the dispute just at the time when President Polk and the expansionists were becoming anxious to acquire California from Mexico. Polk had tried to buy California and to pay Mexico a fair price for the disputed territory between the Rio Grande and the Nueces Rivers, but, having lost Texas, no official of Mexico dared to favor sale of any part of its territory. There were numerous issues between the two countries in addition to the boundary disputes that were exasperating both sides. They were sufficient, Polk thought, to justify the declaration of war for which he was preparing when Mexican troops crossed into the disputed territory, fired on American troops that were already there, and gave Polk a better pretext. War was promptly declared. Generals Scott and Taylor proceeded to defeat the Mexican armies, captured Mexico City, and were in a position to compel surrender of the country and make a peace acceptable to the Americans.

All that Polk and the moderate expansionists wanted was gained in the Treaty of Guadalupe Hidalgo, though some politicians were disappointed that a larger part of Mexico was not gained. Mexico recognized the Rio Grande as the boundary separating Texas from Mexico, and agreed to sell for $15 million all of what is now California, Nevada, Utah, Arizona north of the Gila River, New Mexico west of the Rio Grande, and parts of southwestern Wyoming, and southwestern Colorado. Included in this great area containing 334,479,360 acres were the enormously rich mineral and agricultural regions of California, the Interior Basin that the Mormons were just beginning to develop, and some of the most spectacular scenery in the world, such as the Grand Canyon, and the site of Hoover Dam, present day Bryce and Zion National Parks, and the locale of past and present Indian cultures so absorbing to anthropologists.

[13] On Texas land policy I have used Aldon S. Lang, *Financial History of the Public Lands in Texas* (Waco, Tex., 1932); Curtis Bishop, *Lots of Land* (Austin, Tex., 1949); and Elgin Williams, *The Animating Pursuite of Speculation. Land Traffic in the Annexation of Texas* (New York, 1949).

[14] Vernon Carstensen (ed.), *The Public Lands* (Madison, Wis., 1963), p. 404.

Oregon Compromise

Bernard DeVoto has called 1846 "the year of decision." In that year the War with Mexico was declared; between 15,000 and 20,000 Mormons started their migration across the Mississippi from Nauvoo to Winter Quarters near present Omaha; some 2,000–3,000 Americans trekked across the plains to California and Oregon; and Great Britain and the United States resolved to end their joint occupation of the Oregon region by dividing it at the 49th parallel.[15] American claims to the Pacific Northwest rested solidly on Captain Robert Gray's discovery of the Columbia River, the Lewis and Clark expedition, the transfer of Spanish rights to the United States, John Jacob Astor's establishment of Astoria, and the journeys of missionaries Jason Lee and Marcus Whitman and adventurers such as Hall Jackson Kelley and Nathaniel Wyeth to Oregon. Increasing numbers of American settlers followed the Oregon Trail looking for the choice land that Whitman, Lee, Kelley, and Wyeth had described. By 1843 there were enough Americans in the territory south of the Columbia to organize a provisional government that was sanctioned by the local officials of the Hudson's Bay Company. Three years later the rough and ready American immigration had overwhelmed in numbers the few British subjects and had sufficiently alarmed officials of the company that they moved the center of their operations to Fort Victoria. This move was made easier for them by the fact that the company had trapped to the point of extinction the fur-bearing animals in the Columbia Basin.[16] At this point British and American agents drafted the Treaty of June 15, 1846, whereby the Oregon country was divided at the 49th parallel except that the southern tip of Vancouver Island was retained by the British. The settlement of the Oregon question added 180,644,480 acres to the public lands of the United States.

Gadsden Purchase

One other contiguous territory was yet to be added—the Gadsden Purchase. By the 1850's railroads were being projected in all directions and the Pacific Coast was demanding that it be connected with the East by rail. The shortest, most feasible route connecting San Francisco and Sacramento with the Missouri Valley was by way of the California Trail, the North Platte, South Pass, and the Humboldt River. If a more southerly route was desired, that later followed in part by the Santa Fe Railroad on the 35th parallel by way of the Needles crossing of the Colorado had its advantages. Southern members of Congress and promoters interested in what was called the $100 million railroad to connect San Diego with New Orleans, and those dissatisfied with the territory wrung from Mexico in 1848 combined to demand of Mexico another cession. This, at the least, would make possible the building of an all-American railroad by way of El Paso and Fort Yuma (the Gila River route); at the utmost it would have torn away a large corner of northern Mexico. James Gadsden, a South Carolinian railroad promoter, was placed in charge of negotiations for the acquisition of the additional area and the settlement of other claim matters. After long negotiations Mexico agreed to sell for $10 million a tract south of the Gila River containing 18,961,920 acres that were said by Thomas Hart Benton of Missouri to be "so utterly desolate, desert and God-forsaken" that neither men nor wolves could live on it. Benton was, of course, an advocate of a more central railroad route that would be immediately beneficial to St. Louis. On a per acre basis the cost of the Gadsden Purchase was the second highest of all American territorial purchases, only ex-

[15] Bernard DeVoto, *The Year of Decision* (Boston, 1943), p. 29 and elsewhere.

[16] Merk, *The Oregon Question* (Cambridge, Mass., 1967), pp. 244 ff.

ceeded by the $25 million paid for the Virgin Islands in 1916. Today, parts of the region have been intensively developed with federally subsidized irrigation water and low cost electric power; Phoenix on the Gila River and Tucson in the center of the tract have prospered, the latter through the location of the federally aided State University and an Air Force base.[17]

Alaska Purchase

So far as contiguous areas are concerned, America's boundaries were completed by 1853. That is not to say that the thirst for additional land was slaked, for it was not. Many interests kept up a drumfire of demand for territory from Mexico—the most notable being William Randolph Hearst—as compensation for damages owed or claimed to be owed by Mexican nationals to Americans. Others continued to hope that Canada, to which hundreds of thousands of Americans were emigrating, might ultimately fall like a ripe apple into the American lap; they neglected to consider the strong anti-American feelings of the descendants of the United Empire Loyalists and of the French Canadians who could not look favorably upon a country where anti-Catholic movements flourished.

Most astonishing of all the United States acquisitions of territory was the purchase of Alaska. It had not been preceded by strong public demand for the territory or even by public discussion of its desirability. The Russians were anxious to sell and Seward, one of the most expansionist-minded of American Secretaries of State, was equally anxious to buy. The proposal to buy was scoffed at by many, although Thomas Bailey's examination of newspaper opinion of the time shows much more favor than opposition. Walter LaFeber concludes that the principal favoring factors were "traditional American friendship for Russia, the hope that the deal would sandwich British Columbia between American territory and make inevitable its annexation . . . the belief that Alaskan resources would more than pay the $7,200,000 price tag," and that it would provide a useful foothold for commercial and naval operations.[18] Thus was added to American territory and to the public domain an unsurveyed area only slightly touched by human habitation—the Eskimos, Indians, and scattered Russian trading posts.

Alaska was the last acquisition which brought public land to the United States. Later acquisitions of Hawaii, Puerto Rico, the Philippines, Guam, Samoa and smaller Pacific islands made no addition to the public domain except for sites of public buildings, parks, and minor reservations.

As the acreage of public lands expanded by cessions and purchase, reaching a very high figure in 1803 and again in 1846–48, there is no evidence that the abundance of land tended to make Congress more generous in its disposal. The increasing liberality toward the states and toward settlers seems to have been much more the result of western pressures, and the recognition of many eastern representatives who had once been strongly opposed to such liberality, that what aided the West was also good for the East. Both Congress and administrators, however, were anxious to show generosity toward the residents of the areas being incorporated into United States territory. Legislation, management, and court decisions affecting the land claims all reveal this generosity.

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[17] J. Fred Rippy, *The United States and Mexico* (New York, 1931), pp. 126–67; *Cong. Globe, Appendix*, 33d Cong., 1st sess., June 26, 1854, pp. 1034–35; *Arizona the Grand Canyon State*, American Guide Series (New York, 1966), pp.252–68.

[18] Thomas A. Bailey, "Why the United States Purchased Alaska," *Pacific Historical Review*, III (March 1934), 39 ff.; Walter LaFeber, *The New Empire* (Ithaca, N. Y., 1963), p. 28.

ACQUISITION OF THE PUBLIC DOMAIN[a]

	Total Area	*Public Domain*
Area conceded to the United States by Great Britain in 1783 and by the Convention of 1818 (Lake of the Woods boundary)	525,452,800	
Ceded by seven states to the United States		233,415,680
Louisiana Purchase, 1803	523,446,400	523,446,400
Florida, 1819	43,342,720	43,342,720
Annexation of Texas, 1845	247,060,480	
Oregon Compromise, 1846	180,644,480	180,644,480
Treaty of Guadalupe Hidalgo, 1848	334,479,360	334,479,360
Purchase from Texas, 1850		78,842,880
Gadsden Purchase, 1853	18,961,920	18,961,920
Alaska Purchase, 1867	365,481,600	365,481,600

[a] Based on Donaldson whose figures the Bureau of Land Management has found sufficiently dependable to use in its *Public Land Statistics, 1964.* Included in the figures of public domain are somewhere between 40 million and 50 million acres of private land claims of which 34 million were confirmed and patented. The United States insisted on examining all such claims, even when the title was as clear as crystal and when approved to give a patent for the same. But the ownership of the bulk of the claims was not so clear. Though in all instances they were regarded as part of the public domain until the patent had issued the United States never did own them if the specifications in the treaties providing for acquisition meant much.

CHAPTER VI

Private Land Claims

No problem caused Congress, officials of the General Land Office, and Federal courts more difficulty or took up as much time as the private land claims, that is the grants of land made by predecessor governments in areas acquired from Great Britain, France, Spain, Mexico, and in the Oregon country by agreement with Great Britain. These claims ranged in size from town lots in Detroit, Mobile, New Orleans, St. Augustine, St. Louis, and San Gabriel, through small settlement grants of a few hundred acres, to concessions of 10,000 to 15,000 acres, colonizing grants of 200,000 to 700,000 acres in Louisiana, and finally the huge Forbes grant of 1,427,289 acres in Florida.

French, Spanish, and Mexican land law differed widely from that of Great Britain and the United States. Most of the larger grants were conditioned upon the performance of some task such as erecting sawmills, tanneries, rope walks, distilleries, making roads, stocking cattle ranges, or settling a prescribed number of people on the grant. Other grants rewarded military officers and soldiers or governing officials, pacified pirates, and gained political favor and "the affection of inhabitants." Grants were rarely surveyed, and even after they had reached the equivalent of a patent title, boundaries were vague and few owners seemed to care. Nowhere did the grantees appear anxious about their titles or feel the need to clarify their rights, and before American occupation there was a marked readiness to dispose of them for small sums. Some of the grants had been practically abandoned and there was little evidence that the owners of others held them in high esteem. Some, including the town lots and older grants given for settlement, had been improved and were deserving of swift confirmation when the territory was transferred to the United States.

The first private land claims with which the United States had to deal were the claims of the French settlers at Detroit, Vincennes, Kaskaskia, Cahokia, Fort Wayne, and Green Bay. When the territory east of the Mississippi was transferred to Great Britain in 1763 the British agreed to permit the French settlers to sell their claims to British subjects but had in no other way guaranteed the possessions of these people. Nor was there anything in the Treaty of Peace with Great Britain in 1783 which touched upon the rights of the settlers at these places. In the Virginia Act of Cession of its western lands on March 1, 1784, however, the French and Canadian inhabitants who professed themselves citizens of Virginia, were promised "their possessions and titles confirmed to them, and that they would be protected in the enjoyment of their rights and liberties." This condition in the Act of Cession was accepted by Congress and was in effect a compact, says Francis Philbrick, though if one accepts the Maryland position that the territory had been won by the military power of the Confederation and that Virginia's rights had long since been lost by the Proclamation of 1763 and the Quebec Act of 1774, the compact would appear less meaningful.[1]

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[1] Francis S. Philbrick, *The Laws of Illinois Territory, 1809–1818* (*Collections* of the Illinois State Historical Library), Vol. 25, ccxxiii ff., ccxxvi.

The absence of any guarantee of the rights of property to people in the territory acquired from Britain in 1783 was taken care of in the Jay Treaty of 1794, wherein the United States agreed that all settlers in the territory finally surrendered by the British should continue "to enjoy, unmolested, all their property of every kind . . .. " as if they were citizens of the United States, which they could become if they so wished. Similar promises were made in later treaties with France, Spain, Mexico, and Russia, when the Louisiana Purchase, Florida, New Mexico, California, Oregon, and Alaska were acquired.[2]

Georgia, in its Act of Cession of 1802, followed Virginia's example of binding the United States in a compact to confirm actual settlers in the area ceded in their titles to grants legally and fully executed by the British or Spanish Governments in 1783 and 1795. It left unrecognized, however, French grants made before 1763, Spanish grants not settled in 1795, Spanish grants made after 1795, and an array of claims springing from previous action by the State of Georgia.[3] Twenty-two types of claims listed by William Dunbar, the official government surveyor of Mississippi Territory, varied from grants whose conditions had been fully met to dubious preemption and improvement claims unaccompanied by evidence of settlement.

Throughout the 19th century Congress struggled to deal fairly with an estimated 30,000 to 35,000 claims covering some 45 million acres. It tried to apply both the laws of the Nation under whose government the claims had originated and American land law, modified by equity, to determine their validity and whether or not the grantees had sufficiently conformed to the conditions of their grants to be worthy of patents. Numerous general and many special acts were passed to give claimants an opportunity to prove their rights before commissions, later before the courts, and to grant them reconsideration after initial rejections. Finally, Congress confirmed many claims which were persistently brought before it for reconsideration. Numerous commissions studied and reported on the status of the claims. Registers and receivers sometimes served on these commissions while carrying on their other duties. A heavy burden was thus thrown upon the surveyors general, the registers and receivers, and on the already overburdened staff of the General Land Office. In addition, the 126 cases that were carried up to the Supreme Court before 1860 and the much larger number that reached it thereafter, as well as the numerous cases that cluttered the lower courts but were not carried further, added much to the labor of the judges.

The burden of conducting the vast amount of litigation over these private land claims might not have been so serious had it not been for two major factors that emerged at the outset: the forging and fabrication of grants once the territories had been transferred to American control and land values began to climb; and the action of attorneys and other dealers in claims in hunting up ancient grants. Many of these had either been abandoned under French or Spanish control because it had not been worthwhile to fulfill their conditions, because of Indian trouble, or because they had been merely continued as residence rights without full ownership. Now confirmation was asked on the ground of equity. Those who shaped American policy made clear from the outset their intention of dealing more than fairly with all claimants, recognizing that only by the most generous treatment could they win the loyalty of the new Americans. Yet, because of the extraordinary generosity of the predecessor governments in granting away large acreages for slight services, and because the lands thus granted often constituted the most desirable in the territory gained by annexation and purchase, it was felt that close scrutiny of their muniments was only fair and proper.

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[2] Commager (ed.), *Documents of American History*, p. 165.

[3] *Territorial Papers*, V, 156–59, and note.

Regions Involved

Where were these millions of acres of private land claims? They were located in 19 of the public land states (exclusive of Alaska). In eight additional states some questionable claims were presented for confirmation. Their range extended from Michigan, Wisconsin, and Iowa, through Ohio, Indiana, Illinois, and Wisconsin, to Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Florida, and from Arizona, New Mexico, and California northward to Colorado, Utah, Washington, and Oregon.

Most characteristic were the 1 to 5 arpent (63¼ yards) grants fronting on the Detroit and the St. Clair Rivers in Michigan; at Vincennes, Indiana, on the Wabash River; and on both sides of the Mississippi from Natchez to below New Orleans and on other bayous in Louisiana; they extended back from the rivers 40 arpents.[4] Some of the Louisiana claims included two depths of 40 arpents each and one extraordinary grant claiming 96 arpents on the Mississippi extended back to Lake Maurepas enabling its owner to claim over 200,000 acres. It was these rich delta or alluvial lands along the Mississippi where cotton and sugar plantations were established in the late 18th and early 19th centuries that made Natchez and New Orleans centers of great wealth and culture.

In Alabama there were many claims situated on the Mobile River and its tributaries, the Tombigbee, and the Alabama. Among these was the inflated and fraudulent Hevin-Toulmin claim of 300,000 to 400,000 acres. In Florida there was the huge claim of John Forbes and Company, successor to the fur trading firm of Panton, Leslie and Company. It consisted of 1 million acres west of the Appalachicola River, and a second and larger claim of 1,427,289 acres east of the same river. In north central Florida, midway between the two coasts, there was the Arredondo grant of 289,645 acres which, with other claims brought the family's total to 712,000 acres. The Pedro Miranda claim on Tampa Bay amounted to 368,640 acres. The total claims of these families exceeded 3,200,000 acres. Twenty-seven additional Florida claims amounted to 607,000 acres. In Missouri and Arkansas there were also huge claims, largest of which was the Clamorgan claim for 536,000 arpents in Missouri. In Iowa the Dubuque claim of 165,000 arpents was the most extensive.

In New Mexico and California the Spanish and Mexican Governments had been particularly lavish in granting lands away for cattle ranges in tracts measured by leagues of 4,426 acres. Averaging 17,760 acres each, 813 claims containing some 14 million acres in all, were recorded in California. Nowhere except in New Mexico and perhaps Texas—which never became part of the public domain and therefore never subject to Federal laws respecting claims under predecessor governments—were grants made so lavishly.

Adjudication—a Difficult Task

In adjudicating these numerous land claims whose documents, where available, were in French and Spanish as well as in English, the United States undertook a huge task. In no instance were the archives of antecedent governments as complete and as accurate as the basic land records of the United States. Many documents were missing, some of the originals having been lost, misplaced, or burned and parole testimony had to be used in support of legitimate claims. Appointments in the Treasury Department and in the General Land Office, including registers and receivers, surveyors general, commissioners to investigate land claims, clerks in the Washington office, the Commissioner of the Land Office himself, as well as the Attorneys General and their subordinates who were responsible for the defense of the government rights in the land were, after 1828 if not before, all patronage appointments. The result was that, not uncommonly, men unfamiliar with the

[4] A square arpent was .85 of an acre.

language in which the original documents were written, and not of the highest calibre, defended the government's interest in the land. The claimants, or at least those with the most at stake in large and valuable possessions, engaged the best attorneys to represent them. They were well compensated for their labor while the government attorneys and bureau officials were poorly paid, overworked, and unable to give the time necessary to prepare adequately for their tasks. Furthermore, lame duck Congressmen appeared before the courts as representatives of the claimants against the United States. For example, Hugh Lawson White of Tennessee represented 18 claimants before the Supreme Court between 1833 and 1836. Charles Downing, former Representative from Florida, appeared five times before the Court, on land claims. Other well-known members of Congress represented claimants even while they were members of the House or the Senate—among them, Daniel Webster, Thomas Hart Benton, John McPherson Berrien, and David Levy Yulee.

For the largest claims in Florida, the Forbes and Arredondo claims, the government was hard put to find able attorneys skilled in Spanish law to take charge of the defense. The claimants originally employed John McPherson Berrien, Senator from Georgia; in 1829 Jackson's Attorney General, Daniel Webster, Senator from Massachusetts and one of the ablest lawyers of the time; and Joseph M. White. The latter was shortly to be engaged by the United States to prepare his great *New Collection of Laws, Charters and Local Ordinances of the Governments of Great Britain, France and Spain Relating to the Concessions of Land in their Respective Colonies. . . .*[5] In addition to being employed to compile the statutes and decrees, White was finally paid by the government a retainer fee of $3,000 not to appear for the claimants in the Forbes and Arredondo cases, but he would not take part in the government defense. Because his Attorney General was committed on the other side Jackson had to call in William Wirt, who had been Adams' Attorney General, to handle the defense along with Richard K. Call, a Florida politician. Call assiduously endeavored to secure the original documents from Cuba, where the Spanish authorities had carried them, only to find that the attorneys for the claimants were able to secure documents that were closed to him. Call continued to believe that officials had been denied access to evidence that might have convinced the Supreme Court to decide the cases adversely to the claimants and might have added over 2 million acres to the public domain in Florida.[6]

Government attorneys defending the public title to West Coast lands against the ablest California attorneys had such a uniformly poor record in winning cases that when the very center of San Francisco was contested by claimants (whose titles were later shown to be based on antedated documents and perjured testimony), drastic action was necessary. The Limantour claims had been upheld by the Board of Land Commissioners, despite grave questions as to the authenticity and dating of the documents. Jeremiah Sullivan Black, United States Attorney General, resolved that so much was at stake that the best possible legal talent should be sent to California to attack the Limantour claims. Edwin M. Stanton was appointed to handle the matter, and proceeded to show that the documents on which Limantour depended had been antedated and that the testimony in behalf of the claims was perjured. Black was later severely criticized for paying a fee of $25,000 for Stanton's services, though there is abundant evidence that the fee was not out

[5] 2 vols. (Philadelphia, 1839).

[6] When Berrien left the Attorney General's office he resumed his ties with the large claimants which had not actually been cut. Herbert J. Doherty, Jr., *Richard Keith Call, Southern Unionist* (Gainesville, Fla., 1961), pp. 58 ff.

of line with those being charged by California lawyers in similar cases.[7]

The first step taken by Congress to provide for the land claims in the region north of the Ohio was a resolution of 1788: it confirmed the claims of the French and Canadian inhabitants and other settlers who by 1783 had accepted American citizenship or citizenship of any state, and granted up to 400 acres to heads of families. The donation was later extended to settlers in the Wabash country; men who were not heads of families and persons in the militia not receiving any other grant were given 100 acres.[8] Everywhere the confusion in the records, if any records existed, made it most difficult to separate the legitimate from the fraudulent claims. Grants were forged by several prominent persons in Indiana and Illinois who were at the same time buying up headrights, militia rights, grants, and improvement claims. Francis Philbrick found that John Edgar had by 1808 acquired or fabricated claims to 130,400 acres; Robert Morrison, 45,200 acres; William Morrison, 46,480 acres; Nicholas Jarrot, 39,900; and Robert Reynolds, 24,477 acres.

Territorial governors and secretaries, notably Arthur St. Clair, William Henry Harrison, and Winthrop Sargent, along with their other tasks had to work through the more than 4,000 land claims in the region under their supervision without any carefully defined system or set of rules to guide them. They kept minutes badly, if at all, and in their haste made serious blunders. St. Clair confirmed invalid grants to his sons and greatly enlarged their boundaries—one tract of 30,000 acres was confirmed to his son and John Edgar—while Harrison, eschewing nepotism, committed errors of judgment as serious as those of St. Clair.[9]

Public dissatisfaction with the territorial government's inconsistency in handling the claims and with its long delay in arriving at decisions finally led the Federal government in 1804 to create a Board of Land commissioners to examine all the Illinois claims. This was followed by a second board appointed in 1812 to deal with the previous confirmations of the administrative officers. These boards unearthed "incredible forgeries, fraud, subornation and perjuries" including 700 perjured depositions given before one magistrate. The largest of the dealers in claims were the most guilty. When the Commissioners had completed their labors they had reduced by nearly 50 percent the number and the acreage of confirmed claims, and had saved of the public domain nearly 200,000 acres.[10]

Some of the witnesses brought before the Board of Land Commissioners by John Edgar, Robert Morrison, or Robert Reynolds in support of their claims were described by the board as follows:

> Johnston Amerson. This poor wandering wretch, equally destitute of morality or character, died some years ago in a drunken fit; he has, we believe, been willing to testify, on moderate terms, for any man who would pay him for it, and before any body who would take his testimony.
>
> Joseph Page. This man is a Frenchman, and has been a great swearer; we have perhaps two hundred of his depositions, generally given in favor of the large land jobbers.

Forty-three of his depositions were held to be false. Other witnesses were described as "without property, fond of liquor," and "a

[7] William N. Brigance, *Jeremiah Sullivan Black* (Philadelphia, 1934), pp. 50–55, 131–44. *Cf. Letters of William Carey Jones, in Review of Attorney General Black's Report to the President of the United States on the Subject of Land Titles in California* (San Francisco, 1860), pp. 1–31.

[8] Philbrick, *The Laws of Indiana Territory, 1801–1809* (*Collections* of the Illinois State Historical Library), Vol. 21, lxvii; 1 Stat. 221.

[9] Philbrick, lxxvii ff.

[10] Philbrick, lxxxiii ff. Some claims rejected by the Commissioners were later approved by Congress among whose members friendship and political considerations, miscalled equity, sometimes were more influential than with the members of the Boards.

Dutchman, without property, fond of strong drink, and without character."[11]

Philbrick has shown how well the land jobbers did in securing confirmation of their claims notwithstanding the numerous rejections for forgery, perjury, and inadequate proof. John Edgar had 57,881 acres confirmed by St. Clair or Harrison and 31,225 acres rejected; whereas the Board of Land Commissioners approved only 9,641 acres and rejected 98,961 acres. Robert Morrison had 1,200 acres approved by the board and 44,100 acres rejected. William Morrison had 19,907 acres approved by the board, 2,500 by the governors, and 27,672 rejected, partly by each. Robert Reynolds seems to have fared the worst for he had but 477 acres confirmed and 25,850 rejected. Nicholas Jarrot had little to complain of for his confirmations came to 33,597 acres and his rejections to 9,321 acres.[12]

Judges, land officers, government officials and their families, and military officers jumped in at the very beginning of their residence in the new territories to acquire claims. Arthur St. Clair's claim activity has been mentioned; William McIntosh, territorial treasurer, had claims for 4,333 acres; Henry Vanderburgh for 5,133 acres; Harrison had confirmed to him 3,186 acres and lost at least one additional claim; Francis Vigo, who was suggested as agent to deal with the Indians, picked up 52 400-acre donations in Indiana. Elsewhere the story was much the same. Not all public officials participated in the grab and by no means all the claims acquired by officers were improperly obtained or tainted with fraud.[13]

[11] *American State Papers, Public Lands*, II, 125–26.

[12] Philbrick, *Laws of Indiana Territory*, lxxxiii–lxxxvi, cclxv. The greatest criticism is directed at Edgar whose record in land claims is said to be beyond palliation; "it was full of fraud on an immense scale."

[13] Richard J. Waters, territorial judge and holder of other minor positions in Missouri, accumulated 32 claims of which 11 were confirmed.

Early Experience Valuable

In the adjudication of the claims in the States of Ohio, Indiana, Illinois, and Michigan the United States was gaining experience that was subsequently to prove of much value in handling the more numerous and extensive claims in the Louisiana Purchase, in East and West Florida, and in New Mexico and California. It was to take many years, however, before it learned to deal effectively with forged claims. Altogether in the four states of the Old Northwest 2,851 claims were confirmed for 706,000 acres, or an average for each claim of 240 acres. Possibly an equal number of claims was rejected.[14]

Confirmed Private Land Claims

State	Number	Acreage	Average Size
Illinois	936	185,774	198
Indiana	962	188,303	218
Michigan	942	280,769	298
Ohio	111	51,161	460
	2,851	706,007	240

One of the most difficult tasks in surveying these claims was to reconcile them with the American system of surveying by townships and ranges. Actually, there was no easy way of reconciling the long (40-arpent deep), narrow river claims with the rectangular system except by fitting the townships and ranges around the older grants, which left numerous odd corners.[15]

[14] *Report of the Public Lands Commission*, 1904, p. 140.

[15] One may see something of the difficulty of attempting to reconcile the two systems in the *Illustrated Historical Atlas of Randolph County, Illinois* (1875), esp. the maps of the area around Kaskaskia. These maps show members of the Menard family, apparently descendants of Pierre Menard, as still holding at least 3,800 acres of land that were confirmed to him a half a century before. Pierre Menard was one of the largest claimants for French grants. The problem of surveying public lands in a state where the

Claims in the Louisiana Purchase

Fortunately for the inhabitants of the Louisiana Purchase, Jefferson and the Congress moved more expeditiously in establishing the machinery for the adjudication of private land claims than had been the case with the Illinois country, though the task was to take even longer to complete. Prompt action was necessary, for with the change of government, settlers and investors poured into the new American territory looking for lands on which to settle and for investment opportunities. Where formerly uncultivated wild land had little or no demand, with cession there was a scramble to acquire it and values went up overnight to the delight of "the Spanish grandees, inhabitants who had held their land for many years . . . also that vast and increasing number of speculators and adventurers who, immediately after the acquisition of the country, flocked in to gain fortunes or political preferment," says Louis Houck. Tempted by this sudden rise in values, the last lieutenant governor under Spanish control "feathered his nest" by generous grants to himself and family which were afterwards supported by perjury and fraud. He and other well-to-do French inhabitants purchased numerous claims of those who had little understanding of the significance of the transfer of territory.[16]

Thomas Jefferson recognized the variety of problems the country had to deal with in taking over a vast region whose white inhabitants were aliens living under very different political institutions and land systems. After intensive study of available material and correspondence with persons familiar with the territory, Jefferson submitted to Congress on November 11, 1803, a digest of information concerning the newly acquired Louisiana Purchase. In it was summarized the status of land claims:

> The lands are held in some instances by grants from the Crown, but mostly from the Colonial Government. Perhaps not one quarter part of the lands granted in Louisiana are held by complete titles; and, of the remainder, a considerable part depend upon a written permission of a commandant. Not a small proportion is held by occupancy, with a simple verbal permission of the officer last mentioned. This practice has always been countenanced by the Spanish Government, in order that poor men, when they found themselves a little at ease, might at their own conveniency, apply for and obtain complete title. In the mean time, such imperfect rights were suffered by the Government to descend by inheritance, and even to be transferred by private contract. When requisite, they have been seized by judicial authority, and sold for the payment of debts.
>
> Until within a few years, the Governor of Upper Louisiana was authorized to make surveys of any extent. In the exercise of this discretionary power, some abuses were committed, and a few small monopolies were created.

It was brought out that the registration of the claims was quite incomplete, the maps of the claims had been burned in New Orleans fires of 1788 and 1794, and the only possible way to determine the number, acreage, and boundaries of the claims was to ask the owners to exhibit their titles before officers of the government.[17] Here Jefferson was saying what his successors reiterated: that the records of antecedent governments were in such confused and irregular shape as to make it impossible to determine ownership and boundaries without adjudication. Only by the submission of such documents as the claimants could provide and by parole testimony would it be possible to determine ownership and to segregate the private lands from lands owned by the government.

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private land claims constituted more than a sixth of the entire area is well treated in Harry Lewis Coles, "A History of the Administration of Federal Land Policies and Land Tenure in Louisiana, 1803–1860" (Ph.D. dissertation, Vanderbilt University, 1949), pp. 1–68, 163–202.

[16] Louis Houck, *History of Missouri* (3 vols., Chicago, 1908), III, 34 ff.

[17] *Annals of Congress*, 8th Cong., 2d sess., 1804–05, p. 1514.

Jefferson understated the problems to be met in the process of adjudication. It soon appeared that the last Spanish governor of Upper Louisiana had not only been extraordinarily generous in making late grants of large size contrary to law and custom, but he had signed blank grants that after the termination of Spanish control were filled in for hundreds of thousands of acres. In other cases original grants which had been abandoned were hunted up and altered for submission to American officials.

The basic territorial acts of March 26, 1804, and March 2, 1805, providing for the government of the Purchase, divided it into two territories—Orleans, being essentially the area of present Louisiana minus the Florida parishes, and Louisiana including everything north of the 33d degree of north latitude. In contrast to the Spanish system, the governors and legislative councils of the territories were to have "no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to land. . . ." The district of Louisiana was to be attached to Indiana Territory for administrative purposes.

The treaty of purchase had prescribed that the inhabitants should be incorporated into the United States and admitted as soon as practicable to the rights, advantages and immunities of citizens, and should be "maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."[18] Section 14 of the Act of March 26, 1804, attempted to define their rights in property. It declared that all grants, titles or claims to land dated after October 1, 1800 (date of cession of Louisiana by Spain to France) were null and void "and of no effect in law or equity." Then, having taken away all land rights acquired between 1800 and 1803, Congress in a proviso stated that bona fide grants made according to the laws and customs of the Spanish government to actual settlers "on the lands so granted" in this interim period were not null and void; nor was any step taken by an actual settler before December 20, 1803, to obtain a grant that was in harmony with Spanish laws and customs invalid. Finally, the act stated that grants in this brief 3 years, together with other grants allowed to the wife and family, should not exceed one square mile.[19]

On March 2, 1805, Congress spelled out the rights to land of residents in the two territories and created the machinery of government to test and adjudicate all land claims. Persons resident in the territory October 1, 1800, who had obtained a warrant or order of survey for land they inhabited and cultivated on that day, were to have their titles confirmed as if they "had been completed" but only if the claimants were 21 years of age or the head of a family and had fulfilled the conditions of the grant. Donations up to 640 acres were to be allowed persons who were heads of families or 21 years of age who had settled on land before December 20, 1803, with permission of the proper Spanish officer and in conformity with the laws, usages, and customs of the Spanish government and who on that date actually inhabited and cultivated the land and had no other claims. For each territory a register and a recorder of land titles were to be appointed and to them every person claiming land should bring statements of the nature and extent of their claims with a plat of each tract, the grants, orders of survey, deeds, or other written evidence. Boards of Land Commissioners consisting of either the register or the recorder with two additional appointees were empowered to hear and decide all claims, to summon and examine witnesses, and to report their findings to Congress for its determination. Then followed another one of those provisos sometimes inserted into laws, regardless of whether it was repetitious or inharmonious with previous

[18] Donaldson, The *Public Domain*, p. 96.

[19] 2 Stat. 283 ff.

provisions: nothing in the act was to be construed as recognizing any grant or incomplete title dated after October 1, 1800, or to authorize the commissioners to make any decision on them.

Protests from New Orleans about prospects for confirmation of claims under the Act of 1805 led to the adoption of an act supplementary to it on June 21, 1806, by which persons who had actually settled on land by October 1, 1800, and continued to cultivate it until December 31, 1803, were considered as having an outright grant even though they had no documentary evidence of permission by the Spanish authorities. The measure also removed the age qualification of the Act of 1805 provided claimants had inhabited the land for 10 years before December 20, 1803.[20]

The next claims measure applying to Orleans and Louisiana Territories enacted on March 2, 1807, "exhibited a willingness to compromise with the Spanish system," says Professor Henry Lewis Coles. The age and head-of-family qualifications of the Act of 1805 were repealed, grants up to 2,000 acres which had been continuously inhabited by the claimants for the 10 years preceding December 20, 1803, were to be confirmed, and the Boards of Commissioners were authorized to decide claims up to a league square that were made before December 20, 1803, by persons who were inhabitants of Louisiana; most important, they were to decide cases "according to the laws and established usages of the French and Spanish Governments and customs. . . ".[21]

On June 13, 1812, Congress sanctioned confirmation of claims up to 800 acres that had neither been approved by the Spanish governor nor cultivated, if they had been inhabited on December 20, 1803. By this statute the recorder of land titles was required to extract all claims approved by the land commissioners and to submit them to the Commissioner of the General Land Office who, if he found them proper, was to issue a patent for them. The framers of the Acts of 1803 and 1805 were anxious to do justice to all who had equitable claims to land conceded by Spanish governing officials, while at the same time eliminating all fraudulent, antedated, and unfounded claims. Congressional sensitivity to the rights of the claimants is evidenced by the long series of measures further relaxing and liberalizing the requirements originally set forth. Time after time the period in which claims were allowed to be presented was extended beyond the final date set at which all claims were to be forever barred. At first it was 1806, then 1808, 1812, 1814, and so on indefinitely. Rarely, if ever, has a government shown the patience the United States showed with dilatory claim owners in Louisiana and Orleans Territories.[22]

The land commissioners were required to divide the claims into three categories: first, those meeting all requirements as prescribed by Congress; second, those not meeting all such requirements but deserving confirmation in conformity with the laws, usages, and customs of the Spanish Government; third, those neither meeting the requirements nor deserving of confirmation in accordance with the laws, usages, and customs of the Spanish Government.

The Secretary of the Treasury, under whose jurisdiction the adjudication of private land claims was conducted, was authorized to appoint a government agent who should investigate the claims, and when presented to the Board of Land Commissioners in the territories, oppose all that appeared fraudulent or unfounded. Nothing in the law required members of the boards or the agents to be

[20] 2 Stat. 391.

[21] 2 Stat. 440.

[22] The phrase, "an act for the final adjustment of claims," was adopted over and over again. Act of Feb. 15, 1811 (2 Stat. 617), March 3, 1811 (2 Stat. 663), April 12, 1814 (3 Stat. 121), July 9, 1832 (4 Stat. 565).

familiar with Spanish or French, in which practically all the documents were written, but the boards were authorized to employ persons to translate such documents into English.[23]

The Act of 1805, and similar measures adopted later to apply to Florida and California, were excoriated by land claimants for compelling them to prove at considerable expense and trouble the validity of their rights to land before commissions and, later, courts. Undoubtedly some hardships did result but they were caused by the fact that confused, ill-defined, overlapping, and inadequately documented but valid claims or rights were intermixed with fraudulent claims. The land system in all the territory the United States acquired from Spain had been very loosely managed. Permissions to settle or to use land for specific purposes had been given apparently without thought that permanent rights were being conveyed.

The policy of administrative officers, of Congress, and later of the courts was to be generous, increasingly generous, but at the same time to eliminate claims not based on law, customs, or equity. From the outset of American control there appeared abundant reason to doubt the authenticity of many grants in Louisiana Territory. Silas Bent, government surveyor, reported that the records of his office had "undergone a revolution, there has been Leaves cut out of the Books and others pasted in with Large Plats of Surveys on them . . . the dates have been evidently altered in a large proportion of the certificates, Plats have been altered from smaller to larger, Names erased and other incerted and striking difference in collour of the Ink etc. . . ." He had not found one survey to agree with the time certified on the record; even the marks on the trees were much younger than the documents implied. Bent expressed the view that the large claims from a square league to a million acres were generally fraudulent. "Yet the Combination in favor of them is strong and Powerfull and by their Opulence and influence may perhaps be able to bear down all those who dare to come forward and state facts respecting them. . . ."[24]

John W. Monette, who found land speculation a central theme in western history, many years later wrote of the swarms of land jobbers—"lynx-eyed speculators"—who, having failed in their visionary schemes elsewhere, descended upon Louisiana when the territory was transferred to the United States.

> Claims and evidences of title were to be raked up from old records, musty documents, antiquated titles, concessions, settlement-rights, transfers, entails, and every species of oral and written evidence of title, real and factitious. Claims of this character were eagerly sought by the land speculator, and as freely produced by the needy creole, and the avaricious fabricator. An active commerce sprung up between the artful land-jobbers and the docile, unlettered settler; titles, complete and incomplete, were multiplied in endless variety; and, before the close of the year 1806, the several Recorders' offices . . . were filled with the accumulated titles and claims to land filed for record.[25]

Claims in the Territory of Missouri

Until 1812 Congress dealt with claims in Orleans and Louisiana Territories in the same acts but thereafter conditions called for special measures applying to one or the other individually. In 1812 the Territory of Orleans—now enlarged—was admitted into the Union as the State of Louisiana, and the former Territory of Louisiana was made the Territory of Missouri. Let us proceed with

[23] 2 Stat. 325 ff.

[24] Bent to Jared Mansfield, Surveyor General, Oct. 5, 1806, Carter (ed.), *Territorial Papers*, XIV, 13. Antoine Soulard, last surveyor of the Spanish period, explains away such changes as Bent observed in the records in a letter to the Land Commissioners of Nov. 5, 1806, *ibid.*, pp. 29–33, but says nothing of the marks on trees. Soulard's explanations were not accepted by Gallatin who observed that Soulard had antedated documents and that he had refused to testify under oath concerning his activities under the Spanish Government. *Ibid.*, p. 71.

[25] *DeBow's Review*, Vol. 8 (New Orleans, May 1850), 400. Lemont K. Richardson, "Private Land Claims in Missouri" (Master's thesis, Cornell University, 1953), pp. 32 ff., shows the excited scramble for claims and grants in Missouri.

claims in Missouri and take up the story of Orleans Territory later.

The Board of Land Commissioners for Missouri Territory made its final report in 1812 showing that 1,340 claims had been confirmed, 712 on the basis of concessions, 80 on orders of survey, 425 because of settlement rights, and 123 because of 10-year possession. Two were for a league square, six others were for 1,000 to 3,200 arpents and 20 were for 800 arpents. The greater number were much smaller, 400 acres or less, or were town lots. Two million acres in 2,105 claims were rejected, including all the large claims. The most common grounds for rejection were that the grants were not adequately authenticated, had not been properly issued, were for a greater quantity than Spanish law allowed, had not been cultivated, or were issued after Spanish control had ended.[26]

The powerful fur trading aristocracy of Missouri was not to take this cavalier treatment of its claims lightly. Richest of the great fur trading families were the two brothers Auguste and Pierre Chouteau whose many claims, together with those of their children, came to 234,000 arpents. Marie Phillipe LeDuc, who was translator to the Board of Land Commissioners, had claims totalling 23,656 arpents; Charles Gratiot, clerk of the board, had claims for 15,046 arpents. Other Missourians possessing numerous claims were James Maxwell, 106,356 arpents; Charles DeLassus, 52,200 arpents; Charles Mackay, 42,142 arpents; Louis Lorimier, 39,881 arpents; Louis Lageaume, 37,516 arpents; Jacques St. Vrain, 33,610 arpents; and John Smith T, 33,610 arpents; and finally mention should also be made of Jacques Clamorgan's eight claims for 1,212,486 arpents. Few large claims had been developed to any considerable extent; some had no improvements, had not been surveyed or had their boundaries defined.

The fur traders of Missouri long complained of the prejudice against the large claimants of one of the land commissioners whose removal they had sought; of the rigidity of the legislation and instructions under which the commissioners worked; and of the misunderstanding of Spanish customs respecting land ownership. Through the St. Louis newspapers, the territorial delegate in Congress, petitions and memorials and, if some of the contemporary comments are reliable, the social lobby in St. Louis, they brought over the territorial officers with one or two exceptions to their point of view and exerted appreciable influence in Washington that is reflected in the growing relaxation of the earlier rigid requirements for confirmation.[27]

Long delay in securing American titles for their land was exceedingly irritating and, indeed, harmful to persons having legitimate claims in which they had invested years of labor and other capital. With uncertain titles they could neither sell nor mortgage their property, nor could they subdivide as large holders needed to do to carry their investments. Yet taxes were assessed against their property and, if not paid, such titles as they had became further involved. While the titles were uncertain, and before the claims could be officially surveyed, it was impossible for the government surveyors to run their township and section lines over neighboring lands, which might be public domain. In the better areas of eastern Missouri such public lands were squatted upon, but the settlers, uncertain of their boundaries and of their titles, made only the barest of improvements. It is small wonder that the leading business people of St. Louis and other areas continued to call for greater speed and flexibility in the adjudication process.

There were other issues in the title situation that caused embarrassment to officials, financial loss to the government, and addi-

[26] *American State Papers, Public Lands*, II, 463–729. Eugene Morrow Violette, "Spanish Land Claims in Missouri," *Washington University Studies*, VIII, Humanistic Series (April 1921), 184; *Territorial Papers*, XV, 9.

[27] For the complaints and grievances of the owners of claims see *Territorial Papers*, XIV, 158, 244, 279, 325.

tional trouble to the courts. Rich deposits of lead in the region back of St. Genevieve had long been mined in the crude fashion of the day, producing wealth for the entrepreneurs. Among the leading figures in mining in the American period were Moses Austin, Francois Valle, and John Smith T. Smith had acquired a 10,000-arpent floating concession from Jacques St. Vrain which he interpreted as entitling him to take possession of every new mine opened upon the public lands. The firm of Dodge, Wilson and Craighead was developing a mine they called Shibboleth which promised to be quite productive; Smith claimed that his floating right permitted him to extend his title over their mine site, as well as over a number of other promising developments, which he took over from their discoverers and lessees and operated. Smith's monopolistic activities and claim jumping elsewhere in the mining area all contributed to what was called "mineral-mania" and to disorders, contempt for law, and reckless and destructive mining practices that went with it. Dodge, Wilson and Craighead found that Smith's questionable claim carried more weight in the local courts than the firm's lease from Federal authorities.[28]

Government officials clashed with settlers over squatters' rights and the right of preemption. The latter led to particularly angry recriminations in areas where the private claims had not been adjudicated or finally determined. Under an Act of April 12, 1814, every person who had actually inhabited and cultivated a tract of land in Missouri Territory or Louisiana and who had not removed from the territory or state was entitled to a preemption right by which he could acquire 160 acres at the government price provided application was filed 2 weeks before the public sale.[29] There was as yet no land office opened at which settlers entitled to this privilege could file their applications and naturally few tried to do so.[30] Then out of the blue came a Presidential Proclamation of December 12, 1815, stating that "many uninformed or evil-disposed persons have taken possession of or made a settlement on the public lands" which had been "expressly prohibited" by the Anti-Intrusion Act of 1807. All such persons were warned to remove from the land and those not leaving were threatened with forcible removal by military force and prosecution in the courts.[31] The Federal marshal in St. Louis, reporting the excitement aroused by the proclamation, warned that not "five Militia men of this Territory would . . . march against the intruders on public lands." An immediate question arose: did this proclamation have any bearing on owners whose land claims had been rejected or who had been awarded only a small part of their claim? Naturally it caused consternation among small settlers whether they had a private claim or might only be entitled to a preemption. Their protests, joined with those coming from other regions perhaps, led Congress to take another questionable step which increased Missourians' disrespect for land law. This was an Act of March 25, 1816, allowing any person occupying land before February 1, 1816, to become tenants at will of the United States on as much as 320 acres, provided they first signed a declaration that they would give quiet possession when it was sold by the government.[32] Anyone understanding western feelings toward absentee government and the intensity of feelings against Federal land policy in Missouri could have predicted that the measure would be disregarded.

In 1814 confirmation was authorized of incomplete grants up to a square league—presumably 6,000 acres—which were made

[28] *Territorial Papers*, XIV, 5–7; Thomas Maitland Marshall, *Life and Papers of Frederick Bates* (2 vols., St. Louis, 1926), I, 251 ff. Benton was attorney for Smith.

[29] 3 Stat. 122.

[30] The St. Louis land office was to be opened in June 1816, but it was many months before it was prepared to do business because the surveys had not been completed. *Territorial Papers*, XV, 199, 219.

[31] J. D. Richardson, *Messages and Papers of the Presidents*, I, 572; *Territorial Papers*, XV, 110–12.

[32] 3 Stat. 360.

before March 10, 1804, had been actually located and surveyed by March 10, 1803, and on which the claimant or a tenant had resided, provided it was not "antedated or otherwise fraudulent" and the owner was not the direct beneficiary of a donation grant.[33] These measures enabled the holders of numerous large claims, mostly people whose wealth had been made in the fur trade, to gain confirmation of some claims, but these were only a small part of the land they claimed. For example, John Mullanphy had confirmed four claims for 1,769 arpents; Auguste, Pierre, and other members of the Chouteau family had 34,766 arpents confirmed; Antoine Soulard had 4,542 arpents confirmed; Louis Lorimier had confirmed 6,470 acres; and Marie Leduc had 12,800 arpents confirmed. The report and the acts of confirmation created additional discontent for in important instances owners of 20,000-arpent claims were allowed only a square league and were left uncertain whether, if they accepted the decision and a patent issued, they would lose any prospect of gaining the balance of their claims.

ACTION ON MISSOURI LAND CLAIMS, REPORT OF 1816[a]

Claims submitted		2,555
Confirmed and approved by Congress		1,756
Village lots, field lots and commons	596	
Extensions up to 640 acres of previous confirmations	236	
Concessions dated to March 10, 1804	387	
Claims authorized by Acts of 1812, 1813, and 1814	514	
William Russell	23	
Conditionally confirmed		9
Rejected		801

[a] *American State Papers, Public Lands*, III, 314 ff. I have borrowed the tabulation of Violette, *loc cit.*, p. 187. Russell had submitted 309 claims of which 23 were confirmed by the recorder for 13,905 acres; 316 claims for 152,377 acres were rejected.

[33] Acts of March 3, Aug. 2, 1813, and April 12, 1814, 2 Stat. 813, 3 Stat. 86, 121.

Frederick Bates, a member of the land commission which made the reports of 1812, and was solely responsible for the report of 1816, wrote in 1815 that he with the other commissioners made decisions "with a liberal hand" but he came to regret that "a relaxation bordering on waste has superseded a Policy governed by Justice, & bounded by Principles.—Congress possibly thought, that by doing, all at once, more than Justice required, the greediness of speculation would be glutted. . . ." Complicating recorder Bates' task in adjudicating the titles were the kaleidoscopic changes in the legislation which necessitated doing over again part of the work already done. For example, before he had completed his work under the Act of 1812, the grants previously confirmed under the Act of March 3, 1813, were to be enlarged and had to be surveyed again. Then in April 1814, new legislation superseded previous steps and required a third survey of many claims.[34] William H. Crawford, Secretary of the Treasury, declared in 1818 that the long series of acts relating to private land claims in Missouri "presents an uninterrupted and uniform course of relaxation in favor of land claimants of every description." It is extremely improbable, he added, that "injustice has been done by the rejection of claims which ought to have been confirmed."[35] Neither the holders of large claims nor the Missouri delegation accepted this view.

Thomas Hart Benton's election as Senator from Missouri in 1820 was a major victory for the large land claimants of that state and he owed it to their concerted support. His leading opponent was John C. B. Lucas, former member of the land board who had voted against confirmation of all the large claims and who as territorial judge had done the claimants no good. The election of Lucas would spell disaster to the landed aristocracy

[34] *Territorial Papers*, XV, 65, 228–29.

[35] *Territorial Papers*, XV, 65; *American State Papers, Public Lands*, III, 393.

whose claims still remained unconfirmed. On the eve of the election, Auguste and Pierre Chouteau and others of their associates met to assure the necessary votes for Benton's election. They managed to bring over to their side Marie Phillipe LeDuc, one of the largest landowners who had previously been a bitter enemy of the Missourian.[36] Although clearly in their camp before, Benton thereafter was at the command of the claimants, anxious to ease the process of adjudication. In every session of Congress until 1824 he introduced bills to provide for the establishment of another land commission to which the unconfirmed claims could be taken for trial, whether or not they had been considered and acted on before. His persistent efforts succeeded in 1823–24 when a memorial of the Missouri Legislature calling for the establishment of such a tribunal, which he presented on December 17, 1823, enabled his colleague David Barton to report a bill for a commission which was quickly approved by the House and became a law on May 26.[37]

The last major grievance of Missourians concerning the land system came as a result of the great cataclysm, the New Madrid earthquake of 1812 that destroyed the town of the same name. In 1815 Congress provided that the sufferers should receive scrip locatable elsewhere in Missouri for the loss of land and other damages they had sustained. The scrip could be exchanged for public land, "the sale of which is authorized by law," in the territory. Persons owning lots or small tracts in New Madrid could obtain 160 acres in scrip; others might obtain scrip to the amount of 640 acres, the actual amounts and the criteria for determining them not being provided. Speculators swiftly moved in before the sufferers were aware of the value of their rights, bought up many of the rights, manufactured others by perjury and forgery, and proceeded to locate them on unconfirmed claims, on village commons, and on settler-improved lands for which the occupant was waiting to file his preemption when the land office opened, and on unsurveyed land. Even more demoralizing to an already complicated surveying problem, were the irregularly placed land claims which did not at all coincide with the rectangular system of survey, and the insistence of the scrip owners that they could wholly disregard the official survey lines and make their selections of land in the haphazard way scrip holders had done in the Virginia Military Tract of Ohio.[38] Thus the New Madrid scrip owners, because of the vagueness and impreciseness of the law providing for issue of the scrip, were in conflict with land claimants who had not given up their fight for confirmation, with settlers who had been promised preemption rights and then denied them by the Presidential Proclamation and delay in opening the land office, and finally with land office personnel who were trying to save the rectangular surveys.[39] Throughout 1816 few Missourians were content with the handling of the land claims, the slow rate at which the public land system

[36] The story of the land claimants' efforts to win sufficient votes for Benton has been accepted by all historians. John F. Darby, *Personal Recollections* (St. Louis, 1880), p. 31, says Auguste Chouteau declared that if Lucas were elected the French inhabitants would never get their claims confirmed, whereas Benton was friendly to and would vote for laws to confirm the claims about which there was so much question. See Houck, *History of Missouri*, III, 53, 267; William Nisbet Chambers, *Old Bullion Benton. Senator from the New West* (Boston, 1956), pp. 98–99.

[37] *Annals of Congress*, 18th Cong., 1st sess., pp. 47, 152, 790, 2617; 4 Stat. 52.

[38] Of the 516 certificates issued, 149 were for more land than was relinquished. A Federal examiner of Missouri land matters reported in 1822 that the New Madrid law gave rise "to more fraud and more downright villainy than any law ever passed by the Congress of the United States." It took six amendatory acts to settle all the questions growing out of the New Madrid Act. Floyd C. Shoemaker, *Missouri and Missourians: Land of Contrasts and People of Achievements* (5 vols., Chicago, 1943), I, 203–204; Lemont K. Richardson, "Private Land Claims in Missouri," pp. 130–52.

[39] Act of Feb. 17, 1815, 3 Stat. 211; *Territorial Papers*, XV, 237–45.

was being extended to the territory, the exacerbating conflicts between different claimants and settlers, the difficulty of getting title to land, and the enervating effect all this had on the growth of the territory.

The Act of 1824 provided that any person who had a Spanish or French claim to land in Missouri which might have been perfected had not the territory been transferred to the United States could have his right to the land submitted to examination by the District Court of Missouri, whether or not it had been previously examined by the Boards of Land Commissioners and confirmed or rejected. The court was empowered to determine the validity of the claimant's title, and the extent, locality, and boundaries of the claims, subject to a right of appeal by the losing side to the Supreme Court of the United States, if taken within a year of the decision. The usual provision forever barring further right of appeal to persons who did not bring action within the time allowed was included in this bill but it had become so meaningless through reiteration and repudiation that Congressmen, attorneys, claimants, and lobbyists must have thought it useless. Claimants failing to win confirmation, or whose claim had previously been rejected by the land commissioners, were to pay all costs.

The United States District Attorney was required, in all cases where Federal ownership was questioned, to defend the government's title and if the claim exceeded 1,000 acres and the decision was adverse to the government, he was to transmit the facts of the case to the Attorney General who should determine whether an appeal should be taken to the Supreme Court. If the successful claimant's land had already been sold by the government as public land, the owner of the claim was entitled to enter at public sale an equivalent amount of land in Missouri. A final provision excluded the huge Jacques Clamorgan claim from the privilege of readjudication.[40]

[40] 4 Stat. 50.

For years land claimants derived no benefit from the Act of 1824, partly because James H. Peck, Federal District Judge for Missouri, so discouraged the claimants by his adverse decisions that they refused to bring further actions to test their titles in his court. They conducted a vendetta against him, as they had earlier against Judge John B. Lucas. Judge Lucas, a Federal Territorial Judge, had persistently opposed confirmation of the large claims while acting as a member of the Board of Land Commissioners. He had continued a long feud with the rising Thomas Hart Benton (who had killed Lucas's son in a duel brought on by differences over claims) and filled his correspondence from 1819 to 1827 with warnings to other members of Congress, John Quincy Adams, and other prominent Washington officials, that Benton was the chief apologist and lawyer for the large claimants, that he was trying to ease the path to confirmation of very doubtful claims, and that he was strongly opposed to judicial trials for the claims, preferring that they be left to the consideration of land boards which were much more amenable to influence. Lucas clearly indulged his hatred for Benton in his correspondence but he had taken this same critical attitude toward the large claims long before Benton came into the picture. He questioned the right of the Spanish officers to make the concessions, and the validity of grants that had not been confirmed in the Spanish period or that had not been surveyed, occupied and developed.[41] Lucas retained the confidence of officials in Washington who did not give way to local pressures. Peck likewise held his position on the bench until his death in 1836.

Early in 1829, Auguste Chouteau and other claimants petitioned Congress for the extension of the Act of May 26, 1824, destined to lapse shortly, declaring that an extension would permit them to delay actions in the district court until the Supreme Court had

[41] *Letters of J. B. C. Lucas from 1815 to 1836* (St. Louis, 1905), pp. 31, 33, 72, 136, 214, 243–44, 256.

spoken on the Soulard case which was already regarded as a key in determining the validity of the larger claims. Without the extension they would be at the heavy expense of a decree against them and an appeal from that decree to the Supreme Court. They were correct in thinking that the Peck decision in the Soulard case would be unfavorable and were counting on the Marshall-Story court to render a favorable decision on appeal. The Lucas-Peck line of decisions was based on familiarity with the language in which the original documents were written and on long experience in adjudicating such cases, whereas Marshall and Story had not as yet been introduced to the issues involved in the Missouri cases, other than in a very preliminary way and were not able to read the documents in the original.[42] Benton, as attorney for Soulard, very likely drafted the petition of Chouteau. He failed, however, to convince the court, which in 1830 had to confess it was "unable to form a judgment" because of the lack of documents and, one may guess, unfamiliarity with French and Spanish law. The Soulard case was held under advisement until 1836 when the claim was declared valid. Another case which Marshall had decided at the same time to hold under advisement, and which Benton represented both in 1830 and 1831, did result in a decision favorable to the claimants in the latter year and provided great encouragement to Chouteau and other large claimants.[43]

Marshall seems not to have been aware that a "translated complete collection of all the Spanish and French ordinances, etc., affecting the land titles" in Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Florida had been prepared by Joseph M. White, formerly in the office of the United States Land Commissioners for Florida, and had been presented to Congress on February 11, 1829, and ordered printed. This elaborate compilation had been prepared from the records left by Spanish authorities in Louisiana and East and West Florida and from the Spanish archives in Cuba. White's report and his later *New Collection of Laws, Charters and Local Ordinances of the Governments of Great Britain, France and Spain, Relating to the Concessions of Land in Their Respective Colonies Together with the Laws of Mexico and Texas on the Same Subject*, published in 1839, provided the basis for much of the defense of land claims and the decisions of the courts.[44]

If Peck could not be removed by political pressure he could be impeached. In 1829 and 1830, the House of Representatives did impeach him for action unbecoming a judge in entering into public discussion of land cases outside the courtroom and for his arbitrary action in penalizing a critic for contempt of court. The issue is pertinent to the problem of land claims in Missouri because the Judge had declared that three former officials of the Spanish Government had been tricked to antedate a concession in the Mackay Wherry case then before him. On pressing for further evidence, he found that the Spanish officials had exceeded their authority, had antedated documents in as many as 60 concessions, and had committed intentional fraud; consequently he rejected the claim. In the Auguste Chouteau case Peck made a very detailed examination of Spanish laws as collected by White, which seemed to have been available to him but not to Marshall, and came to a reasonable decision that it likewise must be

[42] Chouteau and others say in their petition: "an appeal is now pending in the Supreme Court of the United States in the case of the widow and heirs of Soulard vs. the United States, the decision in which, as your petitioners believe, will establish principles which must necessarily control the district court" and compel it to reverse a line of decisions it was then following. *American State Papers, Public Lands*, V, 612–13.

[43] 30 Stat. 295 and 35 Stat. 105.

[44] White's book was published in two volumes in Philadelphia in 1839. It is sometimes cited as *White's New Recopilacion of the Laws of Spain and the Indies and of Colonial Charters, Commissions, etc. H. Doc.*, 20th Cong., 2d sess., Vol. V, No. 121 (Serial No. 188). The report was also included in the *American State Papers, Public Lands*, V, 631–774.

declared invalid.[45] These and perhaps other actions led to a newspaper attack upon Peck, the arrest and sentence for contempt of court of the leader of the attack, and the impeachment of Peck. The Senate was not convinced that the charges justified Peck's removal, 21 voting guilty and 22, not guilty.[46]

Congress was later to abandon the procedure it had set up in the Act of 1824 as a result of pressure from the claimants who felt that they were getting nowhere in gaining confirmation of their titles. However, the Act of 1824 was to be the model on which later adjudication processes were erected, notably in California. It is worth noting that Senator Benton, who has been called the political broker of the fur traders and land claimants of Missouri, was responsible for the move away from judicial trial in his own state, and later he tried to keep it out of the Land Act of 1851 in California where his two sons-in-law had acquired large claims.

Meantime the claimants continued to ask for more indulgence in submitting their titles for adjudication. Congress responded in 1826 by allowing 2 additional years for filing petitions for adjudication. But it soon appeared that extension was not what the claimants wanted. In two petitions of 1828 and one of 1831, they declared that Judge Peck had totally lost sight of the remedial character of the Act of 1824, taking such a hard line as to discourage owners, who were withdrawing their petitions. They wanted the Act of 1824 amended to secure the petitioners "a final confirmation of their titles." Failing that, they wanted a further extension of the time in which they could file their petitions in the hope that the Supreme Court would soon decide the Soulard case and repudiate the line of decisions Peck was making. A petition submitted to the Senate on December 23, 1831, and signed by six members of the Chouteau family, John Mullanphy, and William Russell, all with numerous confirmed claims and much larger ones still to be tried, declared that the failure to confirm titles had reduced numerous individuals from a "situation of comfort and independence . . . to indigence and distress," that further delay would be ruinous to private citizens and "injurious to the public weal." The burden of their argument was that the Act of 1824 which was intended to be remedial had been much more injurious to the claimants because of the heavy burden in legal costs and the taxes they had to pay while their titles were unsalable. Extensions in 1826 and 1828 and the removal of costs where the claimant was victorious went part way in meeting their complaints. On the other hand a petition of Stephen Glascock and others protested to Congress against the proposed confirmation by Congress or the reopening of the land claims except by judicial action. The petitioners expressed their belief that all claims deserving of confirmation had already been approved for title.[47]

John Marshall's delay in deciding the Soulard and other cases led Congress on July 9, 1832, to adopt still another act "for the final adjustment of private land claims in Missouri." Instead of relying on the courts, Congress returned to the earlier Board of Land Commissioners, composed of a recorder and two commissioners, to which was given power to try any incomplete grants, concessions or orders of survey made prior to March 10, 1804, and to confirm or reject as the evidence seemed to justify. In the following year the land commissioners were given authority to consider claims based on settlement and cultivation with verbal or implied permission of Spanish or French authorities which had been previously rejected.[48] The

[45] *S. Doc.*, 21st Cong., 2d sess., 1830–31, Vol. I (Serial No. 203), Nos. 11, 12, and 27. The *Journals* of the House and Senate and the *Annals of Congress* contain the actions.

[46] *Annals of Congress*, 21st Cong., 2d sess., p. 45. Benton did not vote.

[47] *American State Papers, Public Lands*, V, 343, 460, 509, 612; VI, 326.

[48] 4 Stat. 565, 661.

new board, possibly influenced by a line of decisions the Supreme Court had begun rendering in 1830, proceeded in its reports of 1834 and 1835 to overturn earlier decisions and to confirm 345 claims and to reject 152. All the prominent families of St. Louis were among those generously treated, the Chouteau family being confirmed in 38,000 arpents, the Pratte family in 20,000 arpents, the St. Vrain family in 16,000 arpents, the Mackay and Lorimier families being each confirmed in 30,000 arpents, the DeLassus family in 65,000 arpents, and the Gratiot family in 10,000 arpents, and a 14,102-arpent claim confirmed to Carlos de Villemont.[49] Of claims over a thousand arpents, 87 were confirmed for a total of 570,000 arpents or an average of 6,551 arpents. The Commissioner of the General Land Office and Congress still had to pass on these claims but they had made a marked step forward with the report of the board. Most of the claims which this new board rejected were small settlement rights, but they did include two Clamorgan claims of 536,904 and 500,000 arpents, a ridiculous claim of 112,895 of the Vicar General of Louisiana, and a claim of Regis Loisel of 44,800 arpents.[50]

Such liberal treatment of Missouri claimants by the Board of Land Commissioners brought forth a strong protest from Richard K. Call, assistant counsel on land claims to the Commissioner of the General Land Office. Call took the position, after a detailed examination of Spanish land law and customs, that titles to land equivalent to the English fee simple title were not confirmed under Spanish law until the grantees had performed the condition of habitation and cultivation. He and Judge Peck made much of the fact that strict orders concerning the granting process had been issued to Spanish officers in Missouri and that they, in effect, suppressed and made grants without regard to such restrictions. Neither Missourians nor land claimants in Louisiana and Florida were ready to accept Call's interpretation, nor, in fact, were the courts.[51]

Congress quite generally approved the confirmations made by the Boards of Land Commissioners, except where it had authorized appeals to the Supreme Court. In an Act of July 4, 1836, it confirmed all the titles approved by the board but added an interesting provision, that "nothing in this act shall apply to . . ." and then it listed the owners of 29 claims with the number of arpents to which the act did not apply. At least three of these claims were later to be accepted by the Supreme Court and scrip was issued to the owners, since the land had long since been sold.[52]

In their final report of December 10, 1835, the Board of Land Commissioners spurned the imputation of fraud cast upon the Spanish and French claims on September 8, 1806, by Albert Gallatin; it declared that his views were founded upon imperfect knowledge of the customs and regulations of the Spanish provinces.[53]

Meantime, the Supreme Court was finally prepared to act on Spanish claims. Between 1830 and 1834 it rendered 14 decisions confirming Florida claims—including the Arredondo claim of 289,645 arpents, the Levi claim of 65,000 arpents, and the Fleming and Hernandez claims each of 20,000 arpents—thereby abandoning the more rigid scrutiny of the laws and grants previously applied by the boards and judges. In 1835 it decided two Chouteau cases and a DeLassus case, one each

[49] For a petition protesting confirmation of the de Villemont claim see *American State Papers, Public Lands*, VIII, 544.

[50] *American State Papers, Public Lands*, VI, 703–901; VII, 773–907; and VIII, 20–243.

[51] *American State Papers, Public Lands*, VIII, 789–871.

[52] 5 Stat. 126. Israel Dodge, Walter Fenwick, and Mackey Wherry were later to get scrip for their 7,050-arpent, 10,000-arpent, and 1,600-arpent claims. The floating claim of Louis Lorimier for 30,000 arpents was confirmed by the Land Commissioners but whether this was the same claim which the Act of 1836 excluded is not clear.

[53] *American State Papers, Public Lands*, VIII, 21.

being confirmed for a league square (7,056 arpents) and in 1836 in the long awaited Soulard case it declared the 10,000-arpent claim valid. John Smith T, however, who had created so much trouble by extending his floating claim over the mining area, suffered the mortification of having it struck down, and Congress excluded him from the benefits of the Act of July 4, 1836, which approved for title all claims confirmed by the land commissioners.[54]

By 1836 the bulk of the work involved in adjudicating the Missouri land claims had been done, the Board of Land Commissioners thought, though it conceded there still remained 700 claims for future consideration, the larger part probably being village lots.[55]

The decisions of the Supreme Court provided new and more liberal guidelines and gave encouragement to persons whose claims had been rejected, sometimes after two or more trials by the land commissioners. Repeated efforts to have rejected claims reconsidered were made by Lewis F. Linn, Senator from Missouri, who had been a member of the very generous Board of Land Commissioners in 1832 and who stated in 1842 that the many claims still to be passed upon belonged to nonresidents and minors. Linn succeeded Benton as spokesman and defender of the claim owners. For 7 years he annually won the approval of the Senate for reviving the adjudication process, but did not find the House cooperative. Under the leadership of Senator David R. Atchison, after Linn's death, and Representative John Slidell who had major personal interests at stake, and with the help of Representatives from Arkansas, Louisiana, Mississippi, and Florida, a general bill providing for the final adjustment of land claims in all public land states of the South, including Missouri, became law on May 26, 1844.[56] The measure revived for 5 years the Act of May 26, 1824, allowing persons whose claims had previously been tried and rejected to take their cases to the Federal District Courts and, if unsuccessful, to carry them on appeal to the Supreme Court. An amendment adopted by the House but eliminated in conference would have prevented consideration of claims previously declared null and void or which had been barred by laws of Congress.[57] Those claimants who won their cases and whose land had been sold or otherwise disposed of by the government, were to be allowed an equivalent amount of scrip subject to location elsewhere on the surveyed public lands.

On June 22, 1860, Congress again provided for the "final adjustment" of land claims in Missouri, Florida, and Louisiana but this time reverted to Benton's favorite device of having the recorder of land titles with the register and receiver investigate unsettled titles and report their findings to the Commissioner of the General Land Office who might reject or approve their recommendations and pass them on to Congress for action. Claims twice rejected were not to be considered and those previously rejected for fraud were not to be confirmed. Under certain conditions appeals were allowed to be carried by the claimant to the Supreme Court. Further extensions of the time in which claims could be filed were made on March 2, 1867, and June 10, 1872.[58]

One might have expected that after 70 years of increasingly liberal legislation the process of adjudicating the land claims in Missouri would have been terminated, but

[54] This paragraph is based on a tabulation of confirmed claims in the *Supreme Court Reports* for the years 1830–36.

[55] Board of Land Commissioners, Sept. 30, 1830, *American State Papers*, *Public Lands*, VIII, 22.

[56] *House Journal*, 28th Cong., 1st sess., June 14, 1844 (Serial No. 438), p. 1122. The vote in the House was 86–84. 5 Stat. 676.

[57] *House Journal*, 28th Cong., 1st sess. (Serial No. 438), June 14, 1844, p. 1118.

[58] *House Reports*, 30th Cong., 1st sess., April 26, 1848, Vol. III, No. 506 (Serial No. 526); *House Reports*, 43d Cong., 1st sess., June 4, 1874, Vol. IV., No. 635 (Serial No. 1626); 12 Stat. 85; 14 Stat. 544 and 17 Stat. 378.

owners of large unconfirmed claims were not ready to give up. The lands they were seeking in Missouri had long since been acquired through purchase or preemption by others, but if the claimants were to win they would acquire scrip which was increasing in value because it could be used to enter land not subject to cash entry. Year after year they continued to ask Congress for permission to submit their claims with additional evidence to the courts for trial. Senator David Davis, one of Illinois' wealthiest landowners and a member of the Committee on Private Land Claims, in 1880 tried to put a quietus to continued agitation of the question by reporting that, after 75 years of legislating on the subject of titles and claims to land in Missouri and the five southern public land states, "it cannot be doubted that all claims resting on any just foundation have been presented for adjudication." His report scoffed at the idea that there were complete claims which had not been given consideration before and held that if there were any such, the owners were not deserving of any consideration after this long delay. Davis' hope that lawyers for rejected claimants would now cease to pester Congress for action was too sanguine.[59]

While Davis was preparing his report, the House Committee on Private Land Claims was completing a report on four claims of Jacques Clamorgan and three other Missourians for amounts ranging from 2,944 arpents to 8,000 arpents, recommending their confirmation and patenting, drawing upon earlier reports to provide the documentation for them and explaining why they had never been confirmed. Though the climate of opinion in the Senate and the House was slowly changing toward claimants asking for adjustment of titles at such a late date, the Committees on Private Land Claims were still disposed to issue reports favorable to them.[60]

Two large claims whose owners had the resources to continue their pressure upon Congress either to confirm their claims or to allow them to appeal to the courts, which existing legislation prevented, were the Clamorgan and Dubuque claims. The Clamorgan claim of 448,000 arpents extended back from the Mississippi River just above St. Louis. On the ground that it had not been regarded as valid by the Spanish authorities and had been abandoned by the claimant and that numerous other concessions had been allowed on the tract, it was rejected by two Boards of Land Commissioners. Clamorgan's descendants and others who had a share in the claim kept the issue before Congress and in 1848 they managed to obtain three favorable reports from House and Senate Committees on Private Land Claims which disputed all unfavorable evidence, held that the claim had not been given a proper trial, and in the third report made a strong argument in support of confirmation. That report was written by John P. Hale of New Hampshire. It reads more like a sharply written brief than like a carefully considered and judicially presented statement. It declared that the Clamorgan claim was a stronger one than the Supreme Court had upheld in the Percheman case and met the standards the Court had applied in the Arredondo and Forbes cases. Since the tract was now covered with settlers it was assumed that the heirs or assignees would receive scrip in lieu of lands if they won the case.[61]

Clamorgan's heirs, who worked behind the scenes so discreetly that members of Congress were never able to discover who they were, were not through, despite the loss of their

[59] *Senate Reports*, 46th Cong., 3d sess., Jan. 21, 1881, Vol. I, No. 776 (Serial No. 1948).

[60] For two favorable reports on these four claims see *House Reports*, 44th Cong., 1st sess., Jan. 28, 1876, Vol. I, No. 24 (Serial No. 1708) and *ibid.*, 46th Cong., 3d sess., Dec. 21, 1880, Vol. I, No. 28 (Serial No. 1982).

[61] Why Hale presented the statement to the Senate and presumably wrote it is difficult to understand. In any case, he was dropped from the Committee on Private Land Claims at the opening of the next session of the Senate. *House Reports*, 30th Cong., 1st sess., April 26, 1848, Vol. III, No. 506 (Serial No. 526); *Senate Reports*, 30th Cong., 2d sess., 1849, No. 328 (Serial No. 535); *Senate Reports*, 32d Cong., 1st sess., Aug. 28, 1852, Vol. II, No. 354 (Serial No. 631).

largest claims.[62] However, they must have seen there was little for any member of Congress to gain politically by supporting the claim and much to lose, for continued agitation about it did little to quiet the worries of people living on the tract. Under an Act of June 22, 1860, which was put through Congress so quietly that one of the most persistent enemies of special legislation had to confess that he had never heard of it, Clamorgan's heirs and three other persons with whom they may have been connected were able to have their long dormant claim considered by the local officers. A divided report was sent to the Commissioner of the General Land Office, where opinion seemed equally divided. Having been discredited by two land boards and recommended in part by a third, it reached the House Committee on Private Land Claims which in 1874 and again in 1876 proposed confirmation and the grant of scrip to the amount of 25,056 arpents to the heirs. Too many claims had gained approval of Congress in the past to please the growing number of land reformers and when a measure to provide the recommended relief came before the House, opponents tore into it and its one supporter. They demanded to know who would be the beneficiaries of the bill and, not getting the information, complained that the scrip to be granted would be used by speculators in pinelands or by others trying to anticipate homesteaders, and condemned it as another raid on the public lands. The measure was first limited by an amendment restricting entry of the scirp to Missouri and then was overwhelmingly rejected. Yet 4 years later, supporters of the Clamorgan claim were back again trying to gain confirmation.[63]

Advocates of another claim once a part of Missouri absorbed the attention of land boards, Commissioners of the General Land Office, and Senate and House Committees on Private Land Claims over the course of many years to no good effect, except that they prevented confirmation of a very doubtful claim. The Dubuque claim dated from the late 18th century when lead mining was attracting attention in what is now eastern Iowa. Julien Dubuque was in debt to August Chouteau and John Mullanphy who ultimately took over ownership of the southern portion of Dubuque's claim to 75,000 to 150,000 arpents in eastern Iowa. When it was first presented to the Missouri Board of Land Commissioners it was called a complete Spanish title, though Lucas dissented. When the report of the board reached Albert Gallatin, Secretary of the Treasury, he observed that the claim appeared to be a mere permission to work certain mines "without any alienation or intention to alienate, the domain," and was subject to revocation at will. He felt that the board ought not to have given certificates to the claimants which tended to give color to the title. The claim came before a reconstituted land board again in 1811, and again Lucas insisted on rejection. The other commissioners were reluctant to concur but finally agreed that the title should not be confirmed. Long years of delay followed, possibly because, with the admission of Missouri into the Union as a State and the establishment of its boundaries, the Dubuque claim was no longer within the territory covered by the Missouri land boards, and neither was there another land board before which the claimants could bring their case. Meanwhile, lead mining was attracting miners from Cornwall, and from river communities all the way from New Orleans to Dubuque, Galena, and Mineral Point. Squatters scattered all over the claim, though they

[62] In 1851 the Supreme Court struck down another Clamorgan claim for 536,904 arpents in southern Missouri, which had long since gone into other hands. The grounds for its decision were failure to make any improvements or to conform to the minimum expectations for Spanish approval of title. The claim had been twice rejected by Boards of Land Commissioners and by the Federal District Court. 54 Stat. 252.

[63] *House Reports*, 43d Cong., 1st sess., June 4, 1874, Vol. V, No. 635 (Serial No. 1626), and *ibid.*, 46th Cong., 3d sess., Dec. 21, 1880, Vol. I, No. 28 (Serial No. 1982); *Cong. Record*, 44th Cong., 1st sess., July 14 and 21, 1876, pp. 3599–4603, 4805–09. Lemont K. Richardson, "Private Land Claims in Missouri," chap. on the Clamorgan claim is particularly good.

must have been worried about the prospects of its being confirmed.[64] The Chouteau and Mullanphy families now began to amass their political strength in an effort to secure confirmation, first through Congress and then through the courts. Their first attempt was unsuccessful, a Senate Committee on Private Land Claims reporting that it was an invalid claim.[65]

The Chouteau and Mullanphy combination had better luck next time. The Senate Committee on Private Land Claims, of which John Henderson of Mississippi was Chairman, held the claim to be good and valid and on June 3, 1884, reported a bill to provide for patenting it.[66] The Senate remained unconvinced. The following January, Henderson returned to the fray with an equally strong report recommending that title be transferred to the claimants. In 1846 a third report from the Committee on Private Land Claims advocated patenting. But the same year the House Committee on Private Land Claims divided on the Dubuque claim, the majority being unfavorable to confirmation.[67]

Having failed to obtain confirmation from Congress, the claimants now resorted to the courts by bringing ejection suits against settlers who had purchased from the United States. The case reached the Supreme Court in the December session of 1853. The court virtually took the same stand as Gallatin and Lucas, maintaining that the only right granted to Dubuque was a right to mine the land and occupy it.[68] Thus, after two rejections by land boards, one of them strongly supported by the Secretary of the Treasury, two unfavorable reports and three favorable reports by Committees on Private Land Claims and a clear rejection by the Supreme Court, the case was put to rest.

The Senate and House Committees on Private Land Claims spent an inordinate amount of time investigating cases that had earlier been rejected or confirmed for less acreages than the owners claimed. They drafted hundreds of reports, some in great detail, and recommended one of three steps: (1) legislation to authorize patenting of the claims, (2) rejection of the claim, which called for no further action, or (3) authorization for the claimant to try his title in the Federal courts. Between 1812 and 1861, 242 measures were adopted by Congress on the recommendation of these committees either approving patents of one or more claims each or allowing the owners to locate lands elsewhere if the tracts they claimed had been alienated by the government. Among the numerous private acts confirming claims in Missouri was one of 1814 authorizing a patent for 1,000 arpents to Daniel Boone.

Private Land Claims in Five Southern States

The experience of claimants to land in the area acquired from Spain in 1810, 1812, and 1819 was similar to that of the Missouri claimants. The early legislation, which was framed for both Missouri and Louisiana, provided for speedy confirmation of claims based on grants or orders of survey no larger than 800 acres and accompanied by evidence of habitation and improvement. Later measures relaxed requirements concerning age, head of family status, documentation, continuous habitation, and improvement, and increased the size of the grant to be confirmed. An early limita-

[64] *American State Papers, Public Lands*, II, 454, 675.

[65] *S. Doc.*, 27th Cong., 2d sess., July 1, 1842, Vol. V, No. 341 (Serial No. 399); *S. Doc.*, 28th Cong., 1st sess., June 3, 1844, Vol. VI, No. 350 (Serial No. 436), pp. 27–28; William J. Petersen, "Spanish Land Grants in Iowa," *The Palimpsest*, 47 (March 1966), 105 ff.

[66] *S. Doc.*, 28th Cong., 1st sess., June 3, 1844, Vol. VI, No. 350 (Serial No. 436), p. 13.

[67] *S. Doc.*, 28th Cong., 2d sess., Jan. 6, 1845, Vol. II, No. 20 (Serial No. 450) and *S. Doc.*, 29th Cong., 1st sess., March 30, 1846, Vol. V, No. 256 (Serial No. 475), p. 26; *House Reports*, 29th Cong., 1st sess., March 14, Vol. II, No. 432 (Serial No. 489), May 11, 1846 and Vol. III, No. 675 (Serial No. 490).

[68] 57 Stat. 203.

tion was increased to 1,280 acres, to 2,000 acres, then to a square league of 7,056 arpents, and finally was abandoned altogether except for claims based on settlement only.[69]

Orleans Territory was divided into two districts with two sets of land commissioners to report on the many thousands of private land claims there. The commissioners' first reports, of 1812 and 1813, show no reluctance to confirm large claims, as the commissioners for Louisiana Territory did in the early days. Claims as large as 45,986 arpents were approved, though the Maison Rouge claim of 218,344 arpents and the Bastrop claim of 773,376 arpents were rejected.

Commissioners of the western district well stated the advisability of treating claimants generously "to tranquillize the minds of a people newly engrafted into the Union, by quieting them as early as possible in their just possessions. . . ." The many questions that had been raised about the validity of the claims and the long delays in arriving at decisions had created "a state of suspense" that was compounded by the inconvenience, difficulty, and expense experienced by the claimants in procuring the necessary testimony to establish their rights. The board permitted as much indulgence as the law allowed by permitting witnesses to be examined both outside the district or within it but not in the presence of the commissioners, even though testimony so obtained was frequently conflicting and not always reliable. It urged upon Congress the confirmation of claims resting on a written petition with a regular survey sanctioned by a duly authorized officer, without proof of established occupancy, since this had been sufficient to procure title under the Spanish Government. The board admitted that Spanish authorities had rejected some claims of this sort and had reduced the number of arpents asked in others, but added that only rarely had the requests been denied when they did not exceed 800 arpents. A second recommendation was that claims which could be shown by oral testimony to have been settled and cultivated before December 20, 1803, should be confirmed even though there was no written permission to settle from the Spanish authorities.[70]

Congress partly approved the recommendations of the western commissioners in an Act of April 12, 1814, authorizing confirmation of incomplete concessions, warrants or orders of survey issued, located or surveyed before December 30, 1803, which did not exceed a square league and donation claims that had not been inhabited on that date. Preemptions of 160 acres were allowed other inhabitants who had cultivated their tracts.[71]

Easier standards for confirmation of titles may have quieted feelings in Louisiana for a time but the process of securing confirmation through the Boards of Land Commissioners, the Commissioner of the Land Office, and Congress caused tedious and exasperating delays in issuing patents and led the Louisiana State Assembly on February 23, 1820, to memorialize Congress on the subject. The assembly complained that the "considerable mass of private titles" which still remained to be decided, involved "consequences imminently injurious to the great landed interests of this State." It "arrests the hand of improvement, and weakens the energies of enterprise and industry, which flourish in their natural vigor on a soil where the title thereof is indisputable . . . [it] leaves waste and unproductive a large portion of the lands of this State; . . . it opens the avenues of fraud and speculation by which the fountains of real estates become corrupted, converting the soil . . . into a medium of unprincipled traffic, reducing its appropriate value, and withering the active powers of the community. . . ." Because of the delay in survey-

[69] Harry L. Coles, Jr., "Applicability of the Public Land System to Louisiana," *Mississippi Valley Historical Review*, XIII (June 1956), 39–58 and *id.*, "The Confirmation of Foreign Land Titles in Louisiana," *Louisiana Historical Quarterly*, XXXVIII (October 1955), 1–22, have both been most helpful.

[70] *American State Papers, Public Lands*, II, 744 ff.

[71] 3 Stat. 121.

ing the claims the neighboring public lands could not be sold. As a result, the tide of emigration elsewhere was turning. The legislature protested against requiring owners of undecided claims to submit them to a tribunal outside the state calling it "incompetent equally from the nature of its organization, its ordinary functions, and the novelty, obscurity and variety of details" it would have to consider. The assembly urged the reconstitution of a Board of Land Commissioners to pass upon all remaining unconfirmed claims and set forth the principles upon which it wished the claims to be decided. Claims which had been outlawed for failure to submit them before the deadline and those which had been passed upon and rejected by previous boards, but for which new evidence had been found, should be given consideration. The backlands for an additional depth of 40 arpents should be conceded all owners of frontage on the rivers, a privilege which would, in effect, double the acreage that had generally been confirmed to this time. In arguing for a much more generous and lenient consideration of claims, the memorial went so far as to say that "possession, without interfering with the claims of others" was tantamount to a title under the Spanish system.[72]

Congress responded promptly by an Act of May 11, 1820, which further extended the period in which claims could be presented to the land officers in Louisiana, allowed persons whose claims had not been confirmed to file additional evidence, retained the maximum that could be confirmed at one league square, but granted a preferential right to owners of frontage to buy the backlands.[73]

Prominent and powerful political figures and businessmen—including Edward Livingston, Stephen Girard, Aaron Burr, Daniel Clark, and Wade Hampton—became associated with the Maison Rouge, Bastrop, and Houmas claims. Representing the interests of these claims in Congress were Judah P. Benjamin, Pierre Soule, and John Slidell. The Maison Rouge claim was kept before the courts until 1850 when Chief Justice Taney finally struck it down.[74] Anticipating the defeat of the Maison Rouge title, Congress on January 27, 1851, authorized any person who had bought from the assignees of the original grantee and who had improved the land, the right to preempt it at $1.25 an acre.[75]

Owners of the Bastrop claim likewise found it possible to keep their claim alive, though it was rejected by the Board of Land Commissioners and disputed by the Commissioner of the Land Office, by gaining repeated recommendations from congressional committees urging its confirmation. Finally, after the Girard portion had been bequeathed to the cities of Philadelphia and New Orleans, these cities brought suit to quiet title with Senator Pierre Soule as one of the attorneys. In a 5–4 decision it was struck down in 1850.[76]

In anticipation of the rejection of the Bastrop claim Congress enacted on March 3, 1851, a generous measure first confirming six claims, which had been held up for nearly half a century because they overlapped the Bastrop claim; second, it confirmed all bona fide purchasers of land from Bastrop who had occupied and cultivated land within the claimed area for 20 years; third, persons who had migrated to the Ouachita territory at the invitation of Bastrop but who had no contract with him were to be confirmed to 640 acres, and finally, all other actual settlers were to be given the right to preempt 160 acres. Fifty-one claims for 29,800 acres were

[72] *American State Papers, Public Lands*, III, 430–32.
[73] 3 Stat. 107.
[74] Jennie O'Kelly Mitchell and Robert Dabney Calhoun, "The Marquis de Maison Rouge, the Baron de Bastrop, and Colonel Abraham Morehouse. Three Ouachita Valley Soldiers of Fortune. The Maison Rouge and Bastrop Spanish Land Grants," *Louisiana Historical Quarterly*, XX (April 1937), 289 ff.
[75] 9 Stat. 565.
[76] 52 Stat. 610.

promptly reported as worthy of title and confirmed by Congress.[77]

The Houmas claim or claims had equally chequered careers, and their records are scattered through the journals of House and Senate committees, the courts, the General Land Office, and a number of manuscript collections. John Slidell and Judah Benjamin almost won confirmation for a greatly amplified claim of more than 200,000 arpents by a seemingly innocuous measure they slipped through Congress in May 1858. When its application to the Houmas claims was learned, there was much excitement among the 500 squatters on the backlands of the claims who were themselves influential in Louisiana politics. A bill was rushed through Congress to repeal the obnoxious confirmation.[78]

In the adjudication of the Florida claims, abundant evidence of fraud in the form of antedated and forged documents turned up and, when it was fully evident, the courts voided the titles. There were, however, some instances where evidence of fraud was not made available until too late, since the higher courts declined to receive new evidence. It was also a grave question whether the courts had not approved claims that had been properly signed and dated but which had been beyond the power of the Spanish officials to grant; others were approved by the courts which one of the ablest authorities on Spanish claims declared would not have been confirmed by the Spanish. Still others—mill grants—won approval at least in lower tribunals even though under Spanish law they, like other inactive grants, would have been declared null and void.[79] If the courts erred in deciding early Florida claims, as Richard K. Call has suggested, those errors multiplied in later cases where the courts rested their decisions more or less on the earlier questionable ones. Thus the Arredondo decision confirming 289,645 acres in Florida in 1832 was used handily, though not in a primary way, to aid in confirming the somewhat dubious 10-league California claim of John C. Fremont in 1854. In turn the Fremont decision was an important factor in the confirmation of other claims about which there was much doubt and some opposition on the court.[80]

Despite increasingly liberal treatment of claimants in Missouri, Louisiana, and Florida, as late as 1858 there were still many outstanding claims which for technical reasons had not been finally determined. In some cases the United States had permitted settlers to enter quarter-sections and if the original claims were to be finally confirmed, it would clearly be most unwise to eject the settlers. An Act of June 2, 1858, sponsored by Missouri Congressmen, attempted to meet this situation by confirming the rights of the claimants to the amount of land within their claims and to allow them "certificates of location" or scrip "equal to that confirmed and unsatisfied." The surveyor general of the district in which the claim was located was to determine whether all or part of the land had passed to others and if it had to issue the scrip ("surveyor general scrip") for the quantity of land unsatisfied.[81]

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[77] 9 Stat. 597; *S. Ex. Doc.*, 32d Cong., 2d sess., Vol. 4 (Serial No. 661), No. 4; Act of June 29, 1854, 10 Stat. 299.

[78] *Cong. Globe*, 35th Cong., 1st sess., App., p. 561 and 36th Cong., 1st sess., pp. 2674, 3178, 3282; Acts of March 3, 1859 and June 21, 1860, 11 Stat. 442 and 12 Stat. 866.

[79] Richard K. Call, summarizes much of the history of the granting procedure under Spanish rule in Florida and offers some disagreements with the Supreme Court in the interpretation of Spanish land laws and practices under them in *American State Papers, Public Lands*, VIII, 249–96.

[80] 31 Stat. 689 ff., and 33 Stat. 721.

[81] 11 Stat. 294. Among the Louisianans' or their estates gaining confirmation of large tracts by the Act of 1858 were Daniel Clark, Julien Poydras, Bernard Marigny, Dominique Bouligny and John McDonogh. Judah P. Benjamin for the Senate Committee on Private Land Claims reported the reasons for the gap in adjudication in *Senate Reports*, 35th

(*Continued on page 112*)

A total of 683,661 acres of scrip were thus issued to claimants who had failed to gain actual ownership of the land they claimed. The scrip was subject to location anywhere on lands that were open to cash purchase at $1.25 an acre. Unlike the Valentine, Sioux Half Breed, and Soldiers Additional Homestead Scrip, it could not be located on unoffered lands. Nearly half of the scrip was entered in Wisconsin, Kansas, Nebraska, and Minnesota. The Missouri scrip was entered mostly in Kansas and Iowa, that of Louisiana in Wisconsin, Nebraska, Minnesota, Louisiana, and Colorado.[82]

Congress tried again in 1860 under the pressure of the brilliant Judah P. Benjamin to assure "the final adjustment" of remaining claims in Missouri, Louisiana, and Florida by providing that owners of all claims which had neither been rejected for fraud nor twice rejected by previous boards could submit their claims to the local land officers or to the District Court for adjudication. Cases in which there was a fair equity in the land though not a good title and which had been out of possession of the claimant for 20 years or more could be carried to the Supreme Court by either the government or the claimant and that court was to judge it "*de novo* . . . as in other cases of appeals thereto in chancery; and as equity and justice and the principles aforesaid may require. . . ." The Act of June 22, 1860, was twice revived and extended for 3 additional years in 1867 and 1872.[83]

Again, as most of the land claimed in these large grants had long since passed to other persons or purchasers, "Supreme Court scrip," as the new issue was called, was the objective of the lobbyists. Claimants gained 627,000 acres of Supreme Court scrip which was subject to entry only on offered land but by some quirk of interpretation was accepted for entry in states where there was no offered land.[84]

In the area acquired from Great Britain, France, and Spain before 1846 a total of 18,643 private land claims had been confirmed for 10,253,671 acres. It is not so much the acreage of the claims that makes their story important, but their location. They included the sites of major cities, much of the lead bearing land of Missouri and Iowa, also the alluvial lands along the lower Mississippi and Louisiana bayous, and the Mobile River where before American occupation, great cotton and sugar plantations were developing. Early French and Spanish farm and plantation makers had selected wisely the choicest land. Patterns of farm ownership thus early established were to remain not drastically changed after the transfer, even after the Civil War. Indeed, recent analysis of some of the Delta counties of Mississippi has shown that though land use has changed markedly, land ownership still follows the age old pattern established 175 years ago.

We may summarize the adjudication of private land claims in the territory acquired

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Cong., 1st sess., Vol. 2 (Serial No. 939), No. 279. *Cong. Globe*, 35th Cong., 1st sess., June 1, 1858, p. 2595. Francis P. Blair, when asked in the House why claims were being advanced at this late time, replied mistakenly that they had been confirmed by law before but the lands had been entered by others and the Van Buren administration had declined to permit them to be "floated" to other locations. By an Act of June 21, 1860, three additional Missouri claims were confirmed. For an interesting study of John McDonogh, "The Land Colossus" of Louisiana, see Arthur G. Nuhrah, "John McDonogh: Man of Many Facets," *Louisiana Historical Quarterly*, XXXIII (January 1950), 5 ff.

[82] *Public Lands Commission Report*, 1905, p. 158.

[83] 12 Stat. 85.

[84] The *Public Lands Commission Report*, 1905, p. 158, shows the following locations of the Supreme Court scrip: Michigan, 189,520 acres; Wisconsin, 71,250 acres; South Dakota, 67,720 acres; Kansas, 52,680 acres; Minnesota, 52,440 acres; North Dakota, 43,230 acres; Colorado, 34,640 acres; California, 16,280 acres; Nebraska, 8,760 acres; Louisiana, 8,400 acres; the rest was scattered over 11 states. A second Act of 1860 confirmed three large Missouri claims for which scrip was given. 12 Stat. 461.

before 1846 in a table showing the number and acreage of approved claims.[85]

CONFIRMED PRIVATE LAND CLAIMS OF STATES EAST OF MISSOURI RIVER

State	Number	Acreage
Alabama	448	251,602
Arkansas	95	295,212
Florida	869	2,711,290
Illinois	936	185,774
Indiana	862	188,303
Iowa	1	5,760
Louisiana	9,302	4,347,891
Michigan	942	280,762
Mississippi	1,154	773,087
Missouri	3,748	1,130,051
Ohio	111	51,161
Wisconsin	175	32,778
Total	18,643	10,253,671

New Territories, Old Problems

What had members of Congress, officials of the General Land Office, judges of the District and Supreme Courts of the states and Federal government, the lawyers, and the interested public in those states where private land claims were located learned from the long, involved, and expensive adjudication of private land claims?[86] When new territory was acquired from Mexico and when the treaty with Great Britain ended the joint occupation of the Oregon country, a fresh flood of claims descended. Was the experience of the past sufficient to enable the government to simplify procedures, make sure that justice would be done, and fraudulent claims be eliminated? Would it be possible to avoid the re-examination of claims by two and three commissions, numerous appeals to the courts or to the Senate and House Committees on Private Land Claims, to say nothing of the lobbying conducted with public officials and members of Congress?

In the past, one difficulty had been that lawyers employed in defending land claims received high fees but the salaries of government officials passing on the claims were small. For example, in 1816, Frederick Bates, recorder of land titles and member of the Board of Land Commissioners, received $500 for his duties in that capacity and, fortunately for him, also held the office of Secretary of the Territory of Missouri for which he received $1,000. The territorial judges received $1,200, the district attorney who was required to defend the government title had to depend on fees, though in Louisiana he received $600. In 1820 the registers and receivers of the land offices who first tried the claims received $500 salaries and 1 percent additional on the money passing through their hands up to $2,500, but there were few fees when the claims were being considered.[87] Benton's biographers have provided no information concerning the fees he took from the claim owners for representing them before the land commissioners and in the courts, but judging from what is known of the income of men like Webster, Wirt, Johnson, and other lawyers employed on land claims they would have been substantial. Able men were not inclined to stay in poorly paid government posts when much more could be made on the other side. The result was that the government's cases were as a rule poorly presented at the lower level, and even before the Supreme Court the ablest attorneys were generally on the side of the claimant.

The legal machinery for determining the

[85] *Report of the Public Lands Commission*, 1904.

[86] Myra Clark Gaines is said to have spent $34,000 on one hearing alone in the eighties, and $250,000 for costs of suits and $600,000 in lawyers' fees but she was only incidentally concerned with private land claims and her case hung on for nearly 60 years. The costs are, however, an indication of what might be involved in prosecuting claims for such a long period. Nolan B. Harmon, Jr., *The Famous Case of Myra Clark Gaines* (Baton Rouge, 1946), p. 453.

[87] *Register of Officers and Agents . . . of the United States*, 1816 and 1820.

validity of titles, passing upon the acreage included, and defining the boundaries was cumbersome, uncertain, slow and overlapping. The early Boards of Land Commissioners, limited as to the size of claims they could confirm, were soon displaced by new boards which were permitted to confirm larger grants. It was not uncommon for three successive boards to pass on claims. The earlier ones conformed more rigidly to their instructions, rejected a large proportion of the large grants, confirming some for only a small portion of the acreage claimed, while the later boards often either reversed the earlier rejection or awarded larger acreages. The letters of Frederick Bates and John B. C. Lucas reveal that those commissioners who looked critically into the documents were unpopular and rejected from local society. After the boards had made their decisions, the Commissioners of the General Land Office were expected to consider both the rejected and the confirmed claims and to pass on to Congress their recommendations for final action. The gap between the first decision of the board and the final action of Congress might extend to as long as 50 years, with patents not issued. Persons dissatisfied with the slowness with which claims were being decided might ask Congress to give their claims special consideration, and many did just this, but it was not easy to accomplish. When large interests were at stake it was perhaps advisable to take the matter out of the hands of the local boards. In any case, Congress, and especially the Committees of Private Land Claims, were frightfully troubled with cases that came back year after year. Yet, when the Bentons, the Slidells, the McDonoghs, and the Lisas importuned, Congress responded.

Benton's favorite device was to rely on the recorder of land titles who would specifically investigate and record land titles and who thus aided in giving legal status to doubtful claims, for the recorder had little time to devote to testing titles, except when he sat as a member of the land commission. Yet, once the title had been recorded, it gave the claimant certain rights such as the right to collect rents and to eject delinquent tenants or opposing claimants, and a somewhat more favorable position in later stages of the adjudication.

Claims which had undergone trial before the Boards of Land Commissioners one or more times, been passed upon by the Commissioner in Washington and by the Attorney General, had been considered by one or more Committees on Private Land Claims, might later under special or general legislation be taken to the Federal District Court for consideration and, on appeal, to the Supreme Court. In addition, numerous cases of conflict between two private claimants reached the Federal courts, cluttering up their dockets and absorbing much of the judges' time. Between 1830 and 1859 the Supreme Court decided 142 land claim cases, or an average of 4.7 a year, though in some years the total ran to 10, 16, and 26. Doubtless it refused to consider many others brought before it on appeal.

By 1848 most members of Congress had gained much experience with private land claims, either in confirming claims approved by Boards of Commissioners, or through considering legislation to liberalize conditions for confirmation or private acts to allow individuals to test their claims in the courts after the time for doing so had expired or when they could not otherwise qualify. Other members such as David Yulee of Florida, John A. Rockwell of Connecticut, John J. Crittenden of Kentucky, Reverdy Johnson of Maryland, Pierre Soule of Louisiana, Lewis Cass of Michigan, John McPherson Berrien of Georgia, Daniel Webster, and Thomas Hart Benton had represented claimants in the courts and some of them had received many times their congressional salary in fees. Webster earned in fees from his law cases, some of which were private land claims, many times his income as a member of Congress.[88]

[88] Fletcher Webster (ed.), *Writings and Speeches of Daniel Webster* (18 vols., Boston, 1903), XVII, 545.

One might expect, therefore, when many hundreds of new claims in California, New Mexico, and Oregon had to be decided, Congress would have been prepared to draft an effective measure to adjudicate them. But it was not to be that simple.

California Claims Rich and Vast

Some 813 claims were waiting decision when the American government assumed control in California, of which 341 were either granted or alleged to have been granted in the 3½ years between January 1843 and July 7, 1846, 87 being granted in the last 6 months of Mexican rule. The grants not only included the best of the coastal valleys and much of the best land in the Sacramento and San Joaquin Valleys but also the site of practically every city of significant size today. Some grants were fractions of an acre—near the missions—and ranchos as small as 18 acres, but most of them were from one to 11 square leagues, or 4,426 to 48,686 acres. Eight unusual grants were in excess of 11 leagues, the largest being 133,440 acres. Finally there were three extraordinary claims only one of which was presented for trial but the others were to annoy many Californians for years until they were abandoned. These were the 1,770,400-acre claim of the family of the Mexican Emperor Iturbide, the McNamara claim of 3,000 leagues or 13,314,000 acres, which Fremont used in part to justify his action in moving troops into California before he was aware war had been declared, and the Russian claim which John Sutter had bought. At least 40 grants had been given to Americans, Germans, Englishmen, and others who agreed to become Catholics and Mexican subjects, and numerous other grants had already passed or were in process of passing into the hands of Americans through intermarriage, mortgage foreclosure, and purchase. A rough estimate of the total acreage in private land claims in California would be 14 million acres, exclusive of the McNamara and Russian claims.

A glance at the maps showing the claims makes clear that most of them were in the coastal valleys of the Santa Ana, Santa Anita, Los Angeles, Salinas, Russian Rivers, and other minor streams draining the valleys of the Coast range. Other claims were located on both sides of the Sacramento River. Included in these grants were the most accessible land and the best lands for grazing and agriculture.[89] Most of them had been made for grazing livestock and were very little cultivated, if at all. None were fenced, few had any identifiable boundaries or discernible corners, some had not even been located before American occupation. Others were floating rights limited to an area three or four times larger than their size. It was the responsibility of the American government to translate this Spanish-Mexican maze of inchoate, incomplete, conditional, unsurveyed, and unlocated grants (some of which were subject to retrocession or forfeiture if conditions were not fulfilled) into an entirely different land system which recognized only absolute fee simple titles or conditional rights whose obligations must be fulfilled before title could be issued.

Congress did not get around to establishing a commission to try the California land claims until 1851 and not until 1853 did the commission get down to serious work. Meantime, the newly admitted state had been overrun almost overnight by hordes of immigrants—more than 300,000 by 1860—who came for gold but, disappointed, remained to till the land. Out of the 813 Mexican grants, the 341 made during the years 1843 to 1846 had scarcely a sign indicating they were privately owned or claimed and not vacant public land. With land values rising rapidly, the disillusioned gold seekers swept over the undeveloped claims, selected desirable locations, and demanded the right of preemption which was available elsewhere on the frontier. Even

[89] W. W. Robinson, *Land in California* (Berkeley, 1948), p. 68.

after the settlers were informed through writs of ejectment and summonses that they were trespassing, they could see no justification in allowing wholly undeveloped tracts of 4,000 to 48,000 acres to be claimed by people who did not use the lands. The settlers wanted homes and though they soon learned that their improvements might be on Mexican claims it was easy for them to conclude that the claims were spurious and, indeed, many of them were. Here is the background of the agrarian warfare which raged throughout the Bay Counties in the fifties and sixties.

The California Land Act of 1851 borrowed from past experience in establishing a land commission to investigate titles and confirm or reject them, subject to later action by the Commissioner of the General Land Office and to appeals by the United States or disappointed claimants to the Federal Circuit Court of California and the Supreme Court. With one exception, poorly paid lame duck politicians, who were ignorant of both the Spanish language in which all the documents were written and Mexican law, were appointed to the commission and the Federal officials who were required to defend the government's title were overburdened and poorly paid. The advantage therefore lay with the private claimants who had the best legal talent in California, and when necessary in Washington, at their service. In the rush for confirmation, claims were upheld by the courts which were later, though too late, shown to be based on fraudulent documents and forged signatures. Such fairly obvious errors and the clear bias of some judges against the squatters who were intruding into the large and undeveloped claims and challenging the claimants titles, brought the judges into politics and caused them to be bitterly criticized by squatters' groups. That claims to as much as 133,000 acres of undeveloped land should be confirmed and thus denied to the thousands of land seekers seemed contrary to American democratic ideas, and was long resented and resisted in California. With the principal exception of the lands of the Southern Pacific Railroad, the large properties in the state today, over which there is great controversy as to whether the excess lands provision of the reclamation laws should be applied, were originally Mexican land claims. Among them are the holdings of the Kern County Land Company (389,972 acres), the Tejon Land Company (272,744 acres), the Irvine ranch (110,000 acres, now slightly reduced), the Standard Oil Company (79,844 acres), and the San Emidio ranch (15,600 acres).[90]

The term squatters, applied to all settlers who anticipated the government land sale and after 1853 to those who anticipated the government surveyor, had no unfavorable connotation as it was used throughout the Mississippi Valley. Squatting on surveyed land was legalized by the prospective Preemption Act of 1841 and the privilege was extended to unsurveyed land and coupled with free land in the Homestead Act of 1862. State after state, and finally the Federal government, went further, conceding that settlers who had moved upon the unoccupied land of nonresidents and began their improvements, and who were later sued in an action of ejectment by the owner, could demand compensation for the fair value of the improvements they had made, provided they had a color of title. Squatter influence was sufficient to get such a law adopted in California in 1856 but it was struck down by the state supreme court which used as a basis for its decision the long since discredited United States Supreme Court case of *Green v. Biddle* of 1824. This occupancy law marked the high tide of the squatter's political strength in California. The influence of the press, the brilliant coterie of San Francisco lawyers retained by the claimants, and of the writings

[90] Of the 31 other large holdings in the Central Valley of California containing 404,079 acres which are shown in the *Hearings Before the Subcommittee on Irrigation of the Committee on Interior and Insular Affairs, United States Senate*, 1958, p. 181, a number were the result of the confirmation of Mexican grants.

of some eminent historians since, has made squatterism a term of reproach. It has been applied indiscriminately to all who questioned dubious titles and tried to test them by settling the land.[91] Some squatters contributed to the disfavor in which their entire class was held by insisting on denying the rights of large owners of unused land, but the more careful fought against dubious titles and tried to have decisions of the courts reopened when clear evidence of fraud and perjury was unearthed.

The events of this era of conflict over land titles helped Henry George to formulate his single tax philosophy and his bitter indictment of American land policy. It has resulted, George maintained, in the creation and perpetuation of many large estates instead of family-size farms.[92]

New Mexico, Arizona, and Colorado Claims

Elsewhere, in New Mexico, Arizona, and Colorado, there was left from the Mexican period a tangle of land claims over which men fought and litigated for many years. Ownership of the most promising land quickly passed into the hands of "Anglos" but, because owners were reluctant to let their title papers out of their hands, claims were still being presented for confirmation as late as 1885. Although an Act of July 22, 1854, authorized the surveyor general of New Mexico Territory to investigate the claims and report to Congress, of the 202 claims filed by 1885, only 48 had been confirmed and 22 patented by 1885. No action had been taken to present 300 claims. Though Californians had complained loud and long about the extended litigation through which they had to go and the loss by the "Californios of their landed heritage as a result of the costly process," Clarence Pullen, surveyor general of New Mexico, regarded their claims, as well as those of the Texans, as having been "so expeditiously and effectively settled." He contrasted the encouragement to "immigration and public prosperity," which followed with the bleak and unhappy delays in his territory. During this long delay Indian raids, misplacements, fire, and wear and tear of time had led to the loss or destruction of many significant documents, and death had carried away many witnesses.[93]

Harold H. Dunham has picturesquely described the history of two of these combined claims, together amounting to 1,714,-764 acres. The claims were approved by the surveyor general and confirmed by Congress notwithstanding the fact that under Mexican law these claims could not exceed 11 leagues each or 97,416 acres together. The amazed settlers continued the fight against the huge claim, succeeded in having it later cut down to 97,000 acres by a Secretary of the Interior, but on appeal to the Supreme Court it was confirmed for the full 1,714,764 acres. The long delay in adjudicating the claims was ended in 1891 by an act setting up a court of private land claims to pass upon all such private land claims in Arizona and New Mexico Territories and Colorado. Perhaps the most interesting feature of the act was the limitation that no claim in excess of the 11 leagues allowed by the laws of Spain and

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[91] Perhaps the outstanding illustration of attacks upon the squatters of California by a philosopher posing as an historian is Josiah Royce, in his *California from the Conquest in 1846 to the Second Vigilance Committee in San Francisco*, published in 1886. Royce speaks (p. 367) of the "squatters' conspiracy," the "wicked and dangerous use . . . of the current abstractions about the absolute rights of man and the higher will of God. . . ." and the "lawless squatters"; he calls the Land Act of 1851 "the devil's instrument." His ferocious onslaught is typical of much that was written about California squatters in the 19th century.

[92] Paul W. Gates, "Adjudication of Spanish-Mexican Land Claims in California," *The Huntington Library Quarterly*, 21 (May 1958), 213 ff., *id.*, "California's Embattled Settlers," *California Historical Society Quarterly*, 41 (June 1962), 99 ff.; *id.*, "Pre-Henry George Land Warfare in California," *California Historical Society Quarterly*, 46 (June 1967), 121 ff.

[93] *H. Ex. Doc.*, 49th Cong., 1st sess., Vol. 11, No. 1, Part 5 (Serial No. 2378), pp. 526–29.

Mexico should be confirmed. Another section provided that titles up to 160 acres should be confirmed to persons who had been in continuous adverse possession of the land for 20 years.[94] Under this act spurious, forged, and antedated claims to 33,500,000 acres, out of a total of 35 million that had not been finally passed upon, were rejected.[95]

PRIVATE LAND CLAIMS CONFIRMED IN ARIZONA, NEW MEXICO, COLORADO[a]

State	Number of Claims Confirmed	Acreage Confirmed
Arizona	95	295,212
Colorado	6	1,397,885
New Mexico	504	9,899,021

[a] "Report of the Public Lands Commission," *Senate Documents*, 58th Cong., 3d sess., Vol. 4, No. 189 (Serial No. 4766), p. 140.

Donation Act of 1850 and Similar Grants

Three years before Britain and the United States had agreed on the 49th parallel as the northern boundary of the Oregon country, Americans who had migrated to the region south of the Columbia drafted an act to provide for a territorial government in which any man was allowed to hold 640 acres wherever he wished to establish a claim. In the 1840's efforts were made to induce Congress to sanction and legalize such 640-acre claims in the jointly held territory, but Congress was not prepared to go so far. To the distress of Oregonians, Congress in the organic act providing for the government of Oregon Territory nullified "all laws heretofore passed in said Territory of Oregon making grants or land, or otherwise affecting or incumbering the title to lands. . . ."[96] However, members of Congress later relented out of a sense of obligation to the pioneers who had risked all in migrating earlier to the disputed country.

The Donation Act of September 27, 1850, provided for grants of 320 acres to all white American citizens or those who intended to become citizens and who had resided in Oregon Territory and cultivated the land 4 years; wives were to have an additional 320 acres "to be held by her in her own right. . . ." All white male citizens or intended citizens who emigrated to the territory between December 1, 1850, and December 1, 1853, and who occupied and improved land for 4 years and who took an oath that the land was not intended for others were to have 160 acres or 320 acres dependent on their marital state. Land reformers like Greeley and Senator Isaac P. Walker of Wisconsin opposed section grants as being altogether too much land for ordinary farmers to use and as contrary to the land limitation ideas they fostered, but Congress seems to have thought of the grant as a reward for patriotic action in somewhat the same way the armed occupation grants to emigrants to Florida were planned. The people of Oregon were anxious to have their rights made alienable earlier than the 4 years the law allowed, for they were uniquely valuable in that for some years

[94] 26 Stat. 854–62.

[95] Harold H. Dunham, *Government Handout. A Study in the Administration of the Public Lands, 1875–1891* (New York, 1941), pp. 24, 212ff. William A. Keleher, *Maxwell Land Grant* (Santa Fe, 1942), does not criticize the confirmation of the Maxwell grant but Herbert O. Brayer, in *William Blackmore: the Spanish-Mexican Land Grants of New Mexico and Colorado, 1863–1878*, pp. 18 note, 130 note, seems to accept the Dunham treatment in part. *Cf.* Jim Berry Pearson, *The Maxwell Land Grant* (Norman, Okla., 1961), *passim*.

For the efforts of George W. Julian, the abolitionist land reformer of the fifties and sixties, to reopen questionable private land claims in New Mexico which had been approved by commissions and courts while acting as Surveyor General of that territory see R. Hal Williams, "George W. Julian and Land Reform in New Mexico, 1885–1889," *Agricultural History*, 41 (January 1967), 71–84. Julian was not trying to apply an outdated and geographically obsolete land system to a semi-arid state but was applying inflexible moral standards to the land claims and to land entries that were not upheld by the prevailing group in the territory.

[96] Act of Aug. 14, 1848, 9 Stat. 323.

no other lands were to be available for purchase until surveys were made, offices opened for acceptance of preemption entries, and the lands offered at public sale. Later legislation allowed settlers to commute their donation rights to cash purchase for $1.25 an acre after residence of 2 years, a period subsequently reduced to one year.[97]

DONATIONS OF LAND IN WASHINGTON AND OREGON[a]

State	Number	Acreage
Oregon	7,432	2,614,082
Washington	1,011	306,795

[a] "Report of the Public Lands Commission," *Senate Documents*, 58th Cong., 3d sess., Vol. 4, No. 189 (Serial No. 4766), p. 140.

Nearly 4 years after Congress had shown its liberality to residents of and emigrants to Oregon it voted to donate 160 acres to each male white resident of New Mexico who resided there on January 1, 1853, and to male white citizens or intended citizens of the United States who emigrated there by January 1, 1858. According to the Public Land Commission of 1904, only 4,640 acres had been approved for patent under this act.[98]

Still another general donation that is analogous to the settlement grants of Oregon and Washington was the measure of August 4, 1842 "to provide for the armed occupation and settlement of the unsettled parts" of Florida. Any person the head of a family or 18 years of age who had settled or would settle within one year on land, reside upon and improve it for 5 successive years, would be entitled to 160 acres.[99] These armed occupation donations were not segregated from the private land claims.

[97] James M. Bergquist, "The Oregon Donation Act and the National Land Policy," *Oregon Historical Quarterly*, 58 (March 1957), 17–47.

[98] Act of July 22, 1854, 10 Stat. 308; *S. Doc.*, 58th Cong., 3d sess., Vol. 4. No. 189 (Serial No. 4766), p., 140.

[99] 5 Stat. 502.

Final Accounting

The view has been expressed that it would have been better for the United States to have looked more critically upon the claims of anterior governments, to have judged the claims by Spanish and Mexican law, to have insisted that confirmation should only be conceded where the proof was clear that conditions of the grants had been fulfilled. Others have maintained that the United States might better have purchased, possibly by condemnation, the largely undeveloped lands of the Chouteau, the McDonogh, the Forbes, the Picos, and other families with large claims and made them a part of the public domain, thus avoiding the long and bitter strife that wracked California and New Mexico, retarded their growth and economic progress, and inflicted heavy legal costs on both the claimants and society generally. Anglo-Saxon supreme sensitivity to property rights prevented any such action. All claimants, large and small, were given every conceivable opportunity to prove their rights to land.

A final accounting of the acreage of confirmed private land claims shows 34 million acres to have been confirmed in 19 states.[100] The significance of the private land claims lies not only in their acreage and location, which made them highly desirable because of their actual or potential great value, but also in the fact that those slow to be confirmed, and many others never to be confirmed, delayed the extensions of surveys and the opening of surrounding lands to entry and settlement and long retarded the permanent development because of the area in question. The appearance of claims in the 20th century and the demands of squatters upon long-since confirmed claims for rejection of their titles on the ground of new discoveries of fraud in the title holders are late illustrations of problems that seemed to many to have no end.

[100] *Public Land Statistics, 1966*, p. 6.

CHAPTER VII

Credit Sales Experiment, 1800-1820

Despite all the attention the western lands received during the period of the Confederation, including the hours of debate in the state legislatures about cession and in the Congress about plans for land disposal, 6 years elapsed under the new Federal Constitution before public concern was again focused on the lands. The Indian troubles and the disastrous defeats of Generals Harmar and St. Clair in 1790 and 1791 undoubtedly frightened many who had planned to cross into the Ohio country. But why Congress was so slow in considering a measure for the disposal of the public lands still remains a mystery.

Most of the speculative groups that had offered to buy Ohio land had failed to make good on their proposals and the two which did carry through part of their contracts, the Ohio Company and John Cleves Symmes, brought more trouble than certificates of debt to the Federal Treasury. There was too much cheap land going begging that was closer or more easily accessible to older established communities, such as the western portions of New York, Pennsylvania, and Georgia, and in Kentucky, Tennessee, and Maine. Capitalists seemed to have lost interest in Ohio. The government's efforts to sell land at auction had brought very limited results in 1796. No purchaser had bought an entire township, and only 108,431 acres had been sold, of which 35,457 acres were subsequently forfeited. Another sale of 202,187 acres in the Erie Triangle had been made to Pennsylvania for $151,640; doubtless it was paid in the depreciated certificates of indebtedness. The auction sale, the Pennsylvania purchase, and the slow returns from the Ohio and Scioto groups altogether brought the government, in the 10 years following 1785, an amount less than 1 percent of its total obligations, which at the time were selling at 12 to 15 cents on the dollar.[1] At that rate it would have taken 100 years to retire the



A Family Encampment
From A. D. Richardson,
Beyond the Mississippi, *1867*

[1] *American State Papers, Public Lands*, III, 459. A somewhat different figure is given by Albion Morris Dyer, *First Ownership of Ohio Lands* (Boston, 1911), pp. 53–57. Alexander Macomb and John Edgar who were among the largest holders of land in New York and Illinois then or later, had purchased the 35,457 acres which were forfeited. Other large buyers were James Gray, 5,269 acres; Dr. Robert Johnson, 11,240 acres; Nathan McFarland 11,194 acres; and John Hopkins, 12,267 acres.

debt with revenue from public land sales. Yet Alexander Hamilton, in his famous report of 1790 on the public credit, was optimistic enough to suggest that if the western lands were to sell for 20 cents an acre, the prospects for profit to speculators would encourage large purchases and would provide sufficient income from sales to retire one-third of the debt.[2] Hamilton's optimism was not shared by members of Congress. Those who were engaged in land speculation were having difficulty in carrying their commitments and fully realized that capital for land investments, as compared with investments in government securities, was no longer easy to secure. Neither Congress nor the administration attempted to bring additional lands on the market for some years.[3]

Whatever the many politician-investors in public lands may have thought of the economic opportunities of the Ohio country, there were thousands of settler-squatters either already on the land or anxious to buy it. They could not buy public land for there was no Federal office in Ohio in which to file their entries. A representative of the frontier school of thought on land questions, Thomas Scott of Pennsylvania, in an able speech in Congress on May 29, 1789, had expressed keen dislike for large sales to speculators, urged that a land office be created in Ohio and warned that, unless the seven thousand people waiting to buy land there were not soon satisfied, they would either turn to Spanish Louisiana for their homes or would rush upon the land as squatters. Scott drew some support for his views from James Madison and one or two others. Perhaps unfortunately, he wanted to combine preemption rights with indiscriminate location as was the practice in southern states. The principal opponent of Scott in the debate was Elias Boudinot, a speculator associate of Symmes.[4] Nothing was accomplished by the discussion. This rift of opinion between eastern, conservatively oriented Congressmen—they hoped for substantial revenues from the public lands, feared the depressing effect favorable land terms in the West would have on eastern land values, and did not wish to make any concession to the squatters' demands for preemption—and the spokesmen for the frontier was to characterize debates on public land policies until the Civil War.

A System of Disposal Studied

Alexander Hamilton, as Secretary of the Treasury, was charged by the House of Representatives in 1789 with reporting "on a uniform system for the disposition of lands and property of the United States." Washington was quite familiar with and deeply reprobated the practice of squatting but Hamilton, less familiar with the West, was not sufficiently impressed with the evils of squatting to suggest remedies or preventive measures. Yet the practice had been a source of anxiety from the first cessions of land. It has been seen that General Harmar in 1783 drove off many squatters who had planted themselves on "all the most valuable land" for several hundred miles from the mouth of the Muskingum. As soon as the troops left the squatters returned, and from that time on the government was never free from such illegal intrusions upon public lands, and even on Indian lands, except when the Indians were threatening the settlements. Henry Knox, who was later to be a colleague of Hamilton in Washington's Cabinet, in 1787 spoke of the lawless "usurpation of the public lands," the "audacious defiance" of the will of Congress by squatters, against whose actions he felt the most drastic steps should be taken.

[2] Harold C. Syrett, (ed.), *The Papers of Alexander Hamilton* (New York, 1962), VI, 91–92.

[3] *American State Papers, Public Lands*, III, 459, 613; *Journals of the Continental Congress*, September 30, 1788, XXXIV, 564. A special committee of the House further explained the delay in bringing lands into market was owing to the "difficulty attending the appointment of a Surveyor General." *Annals of Congress*, 4th Cong., 2d sess., p. 2064.

[4] *Annals of Congress*, 1st Cong., pp. 427–32, 645–57; Payson J. Treat, *The National Land System*, pp. 74ff.

His urgent recommendation led Congress to station a number of companies of troops along the Ohio frontier, partly for defense and partly to protect the public lands from intruders.

Early in 1796 Governor Arthur St. Clair of the Northwest Territory, observing that "numbers of People from Kentucky had entered upon the Lands of the U. S. to the westward of the Miami, and were making what are called improvements, I warned them to desist, without much effect, and it was all I could do, unless Actions had been brought against them as Trespassers which I had no Orders to do." He reported that since he first witnessed their trespassing the numbers had increased surprisingly. Acting Governor Winthrop Sargent noted the extent of intrusions and expressed the feeling that the longer government waited to remove the squatters the more distressing the action would be.[5]

The request of the House that Hamilton devise a system for disposing of the public land and Hamilton's report on the subject both disregarded, almost to the point of unawareness it would seem, the Land Ordinance of 1785. Prior survey on the rectangular system, which Jefferson had advocated and which was included in the Land Ordinance, did not appear so essential to Hamilton. He favored, at least for large purchasers, the privilege of buying land within natural boundaries. Nor did he think uniform townships 6 miles square were necessary. His report mentions townships 10 miles square,the size originally recommended by Jefferson. Hamilton was aware that the New England group settlement plan was commonly used in the North; he wanted to accommodate such groups, as well as "monied individuals and companies who will buy to sell again." To that end he proposed the creation of a general land office at the Capital. His most forward-looking recommendation was that "for the accommodation of the present inhabitants of the Western Territory, and of unassociated persons and families who may emigrate thither . . . one office, subordinate to that of the Seat of Congress, should be opened in the North western and another in the South western Government." Hamilton thought that the "certificates issued for land upon the proposed loan" might be extensively used to enter lands and assumed that if land were subject to purchase in two different offices there would be some overlapping entries, as was so commonly the case in the South. It was fortunate that land purchases were ultimately required to be made in the nearest office only. Hamilton must have been thoroughly aware of the extent to which officials of colonial New York had abused their powers by insisting on having shares in most large transfers of land by the Colony. He tried to avoid such abuses by urging that all land office officials should be denied the right of dealing in government lands either directly or through others acting in trust for them. This prohibition was later to be made a part of American land law but not with sufficient safeguards to secure its strict enforcement.

Nothing was said in Hamilton's report about the public auction feature of the Land Ordinance. Furthermore, Hamilton's statement that "the price shall be thirty Cents per acre . . ." seems to indicate that he thought it would be the usual price paid by all. Credit was to be extended only to purchasers of a township or more, and then only for 2 years. He favored sales of tracts as small as 100 acres whereas larger units were to be written into the legislation of 1796, 1800, and 1804. He also opposed restrictions on sales other than the requirement that one quarter of the purchase price of townships should be "paid down" and security other than the land be given for the balance. The cost of survey was to be paid by the buyer and other fees were to be required for the drafting of papers.[6]

[5] Carter, (ed.), *Territorial Papers*, II, 27–28, 51, 338–39, 548–49, 587; Randolph C. Downes, *Frontier Ohio* (Columbus, 1935), pp. 74–78, 145.

[6] Syrett (ed.), *The Papers of Alexander Hamilton*, VI, 502 ff.

Not until 1796 did Congress settle down to a serious discussion of how the public lands could best be sold to produce revenue for the retirement of a portion of the debt. Robert Rutherford of Virginia was anxious to make sure that the lands would not fall to "that hydra speculation" which had done so much harm to the country. He feared that the capitalist "monsters" of Europe and the United States would combine in establishing a monopoly of the land.[7] Other members were in agreement that it was not wise to permit large acquisitions of land by capitalists, yet to ban such investments would likely defeat the object of raising revenue. Speaker of the House, Jonathon Dayton of New Jersey, a large investor in Ohio lands and an associate of John Cleves Symmes, took an active part in the debate. He argued for a high price that would keep sales at no more than 500,000 to 800,000 acres yearly and for the right of holders of military bounty land warrants of the Revolution to locate their warrants outside the United States Military District, where all the good land was gone. Dayton declared that he was familiar with the bounty land business as he held 47 warrants, one of which came to him for his own service in the Revolution. He was anxious to have a provision included that would permit the location of these warrants on land outside the tract but said that in view of his interest he would not vote on the matter.

Albert Gallatin, who was most influential in redrafting the new land law, thought there was "no object of so great importance to the United States as the extinction of the curse of the country, the Public Debt, and no class of citizens would be more benefitted by this extinction than the poor." To extinguish the debt rapidly, the people desiring land must be required to pay a high price for it. Those most likely to buy were speculators; to meet their wishes, lands should be sold in large tracts. For medium-sized investors and farmers, smaller units of land should be available. The large class of settlers without capital could buy from the big and medium speculators on the long credit they would extend. Consequently, Gallatin favored offering half the lands by townships, the sales to be held in the Capital, and the other half by sections of 640 acres with the sales held in a central spot in the West.[8]

Gallatin seemed to be on all sides of the issues revolving around speculators and settlers. Having taken the position that revenue was the basic need and that capitalists should be encouraged to buy, he then argued that a high price would deter capitalists and would cause the lands to be bought largely, if not solely, by settlers. It is odd indeed that Gallatin, who thought of himself as a friend of the settler, should advocate a price of $2.00 while Hamilton, commonly regarded as friendly to speculators and not concerned about settlers, should advocate a price of 20 or 30 cents.[9] Both favored sale of part of the land in small tracts. Gallatin advocated the inclusion of a settlement clause in contracts requiring purchasers to return to the government all land that did not have a family on each quarter-section in 2 years. He conceded, however, that such a provision would reduce the amount of land sold to speculators and added that it would be a beneficial thing if speculators "were driven from the market. Lands which produced nothing were of no real value. The high price expected must be got from real settlers alone." Though earlier he had advocated sales to speculators he now thought it better for the government to absorb all speculative profits by selling direct in small lots to settlers. Madison and other democratically inclined members of Congress supported Gallatin on making small tract sales and requiring settlement in 2 years. William Cooper, the rich New York landlord, argued in opposition. The proposals for sales in the Ohio country, he declared, would repel buyers to such an

[7] *Annals of Congress*, 4th Cong., 1st sess., Feb. 15, 1796, p. 328.

[8] *Ibid.*, pp. 306, 330, 339, 418.

[9] *American State Papers, Finance*, I, 322.

extent that they would enrich him by $10,000 by making a better market for his own New York lands. Arguing from his own extensive experience in the land business in New York, he maintained that poor men were not able to buy and therefore never attended public auctions but always got their land from the large purchasers. Even at the sales of small lots in Pennsylvania and New York he ventured to say that there were not 20 instances where farmers bought land. The settlement requirement was defeated though the 160-acre provision was carried, only to be defeated in the Senate. In the end Congress decided on a high minimum price of $2 an acre and sales at auction.[10]

The Land Act of 1796

The Act of 1796 which received little attention in the Senate, owed more to Gallatin than to Hamilton, who has been commonly thought of as responsible for the emphasis on revenue in early public land policy. History may have done an injustice to Hamilton in assigning him this responsibility, for during the first years of the American experiment there were few statesmen who did not think that the public lands should be used for revenue.[11]

The Act of 1796 took over and made permanent the rectangular system of survey with townships 6 miles square. Half the townships in the newly surveyed area were to be sold in quarter-townships of 5,120 acres each, after reserving the four central sections. The alternate townships were to be divided and sold as sections of 640 acres. The sections were to be numbered consecutively beginning with number one in the northeast corner and "proceeding west and east alternatively, through the township, with progressive numbers. . . ." Since then, sections in every surveyed township, with the exception of some adjacent to private land claims, have been numbered in this way. When land was surveyed and ready for sale at the public auction, announcements were to be inserted in one newspaper in each state and territory 2 months in advance.[12] Auctions of townships to be sold as sections were to be held at Cincinnati and Pittsburgh and those for the sale of quarter-townships were to be conducted at the Seat of Government. The Act of 1796 specifically retained one section of the Land Ordinance: alternate townships in the Seven Ranges which were to be offered intact, except for the reserved sections, were to be sold in Philadelphia; those which were to be sold as sections were to be offered at Pittsburgh.[13] Instead of reserving scattered sections for future disposal by Congress, the four central sections were to be retained.

Gallatin's suggestion of a high price to deter speculative purchasing led to the adoption of the $2.00-an-acre instead of the 20-cent price favored by Hamilton. Credit, however, was to be extended with only one-twentieth of the purchase price being required at the time of sale, one half in 30 days, and the balance in a year. Where cash was paid, 10 percent discount was allowed on the second half, or 5 percent on the total. Thus, the best features of the Land Ordinance of 1785 were retained and made permanent in the developing Federal land system.

The *Annals of Congress* do not suggest that the $2.00 price aroused much opposition or stimulated discussion. Gallatin was quite aware that there were "self-interested land-

[10] *Annals of Congress*, 3d Cong., 1st sess., pp. 405–406, 409–23, 857–68.

[11] See Chap. IV, "Land Ordinance of 1785."

[12] The advertising patronage of the General Land Office, especially the announcements of sales, postponements, hearings on conflicting claims and other such notices constituted a major source of income for local newspapers in struggling western communities, without which they might not have survived. Almost invariably it was assigned to papers representing the official line of the party in power in the capital.

[13] Act of May 18, 1796, 1 Stat. 494; *Annals of Congress*, 4th Cong., 1st sess., Feb. 19, 1786, p. 354.

holders" both in as well as outside the Congress who feared that a liberal policy of disposing of the public lands would produce "too great an emigration from the Atlantic States" to the West. This fear of the older states and speculators and the hope of speedily retiring the public debt doubtless were the principal factors in the adoption of the $2.00 price. The terms were not nearly as generous as were commonly offered at the time either by the states for their own lands or by private landowners.[14]

Early Administrative Procedures

Since the production of revenue was a prime objective of the public land system it was natural for Congress to assign responsibility to the Secretary of the Treasury for surveying the lands, establishing offices for their sale, issuing patents which were to be countersigned by the Secretary of State, and maintaining records. The Act of 1796 was most detailed in providing for the survey of public lands. It replaced the Geographer of the Confederation with a Surveyor General and instructed him to survey an additional seven ranges beyond those that had been already set off. Deputy surveyors were required, in running the lines, to mark on a tree near each corner of the township and section the number of township, range, and section, and to note in their fieldbooks all mines, salt licks and springs, mill seats, water courses, and "also the quality of the lands." The Surveyor General was to make a fair plat presumably of each township from the surveyor's notes which was to be available at his office and at the place of sale. It was these plats which in the future were to be looked over in 30 public land states by millions of landseekers eager to find tracts with promising descriptions that they might file upon after personal inspection.[15] The Act of 1796 mentioned receivers of public moneys who presumably would receive applications for entries and payments but did not spell out how land offices were to function and left responsibility in the hands of the Surveyor General and the Secretary of the Treasury.

In 1800 and 1804 Congress took a major step toward satisfying western wishes that land sales be conducted near the tracts to be sold. A statute of May 10, 1800, provided for the establishment of four land offices at Marietta, Chillicothe, Steubenville, and Cincinnati. In 1803 and 1804 additional offices were opened in Detroit, Kaskaskia, and Vincennes and one each east and west of the Pearl River in Mississippi Territory. In each office there were to be two officials. The register was to receive applications for entries of land, make notations of entries on the tract and plat books, and prepare monthly reports of all applications for transmission to the Treasury Department. The receiver was to accept payments for the land, to make and retain in his own office abstracts of entries for which payments were made, and to send copies to the Treasury Department. In this way, the Treasury would have two complete monthly reports of all land business from the individual offices, each being a full check upon the other. Both the register and the receiver would retain also complete monthly accounts of all land entries and payments, so that in effect there would be a full record of all transactions maintained at the Treasury De-

[14] *Annals of Congress*, 4th Cong., 1st sess., p. 354.

[15] For reproductions of a township plat and of tractbook entries see *The Public Land Records . . . Footnotes to American History*, prepared by the Bureau of Land Management (Washington, 1959). Later, charges were sometimes made that the local officers denied landseekers the right of access to these plats and that lands were indicated on them as already filed upon when the local officers were simply holding them until favored individuals could make their inspections and then enter such as proved most attractive.

[16] 2 Stat. 73, 230, 277.

partment and another in the local land office. When fires or earthquakes (San Francisco) destroyed local records, it was possible to reconstruct them. With such a complete check upon each of the officers in each land district, the Treasury Department ought to have had early knowledge of misuse of funds. Nevertheless, defaulting officers and heavy government losses were common in the Jackson period.

From 1800 to 1946 registers and receivers retained their position in offices all the way from Gainesville, Florida, to Seattle, Washington. At times they were rushed to the limit to handle business and at other times there was little for them to do, so few were the inquiries for land. For at least 50 years before 1946, the Commissioners were recommending that one of the positions be abolished but not until President Roosevelt did so by a reorganization order in 1946 was the position of register ended.

A third but temporary official—the Superintendent of Public Sales—was provided for in the Act of 1800. Under the Ordinance of 1785 and the Act of 1796 all public lands to be opened to sale and settlement were required first to be put up at public auction, where it was expected there would be competitive bidding at least for the most promising lands. Since the register and the receiver would be busy filling out purchase papers, making entries and receiving money, a superintendent of public sales was to be appointed; his tenure would last only for the duration of the sale that might be 3 weeks or longer. He was to cry the land, ask for bidders, and knock down the parcels to the one offering the highest price, or quickly pass over tracts not drawing bids. After the auction, the unsold land was to be open to "private sale" at the minimum price of $2.00 an acre in 1800 (after 1820, $1.25 an acre). It was classified as "offered" land and could be entered in any amount for cash (or credit), scrip or warrants (when they became available). The distinction between "offered" land and "unoffered" land is of fundamental importance. Surveyed but unoffered land was only to be open to preemption between 1841 and 1862; the newer tracts being surveyed and opened to settlement after 1862 were not offered and could only be homesteaded or preempted in 160-acre units, not bought in large tracts.

Creation of General Land Office

In 1812 the administrative organization for the public lands was brought to the form it was to keep until the 20th century: the General Land Office was created and the duties previously handled by the Secretary of the Treasury were delegated to a Commissioner who was to be head of the new office. The issue of patents for land previously requiring the attention of the Secretary of State, and of military bounty land warrants to veterans of wars, previously requiring the attention of the Secretary of War, became the responsibility of the Commissioner; the President was still to sign the patents.[17]

Thus by 1812 there was created the administrative machinery that was to manage close to a billion and a half acres spread over 30 states and to handle the transfer through sale, grants, and gifts of two-thirds of this huge acreage to individuals, companies, states, and railroads. The Commissioner, the Surveyors General (there were 15 in 1889), the registers and receivers (there were 82 of each in 1871, 94 in 1921), superintendents of public sales, an increasing number of clerks, and deputy surveyors were to carry out the spadework. Later, investigating agents were to be extensively used to ferret out illegal entries and timber stealing. Through visits to look over plats, file entries, make payments, contest other entries, file relinquishments, and get patents, the people of the western states were more in touch with Federal land

[17] Act of April 25, 1812, 2 Stat. 716.

officers than with any and all other officers of the United States.[18]

Until 1849 the General Land Office continued as a bureau in the Treasury Department. During this time its activities were given small attention in that Department's annual reports. A reading of the reports suggests that the responsibilities of the office were not given the attention their importance warranted. When the "Home" or Interior Department was created in 1849, and the General Land Office became its most important bureau, it came into its own. In 1946 the General Land Office was consolidated with the Grazing Service into the Bureau of Land Management.

No Rush to Purchase

No rush to purchase land followed the adoption of the Act of 1796. Speculators were not attracted in any considerable number, as Gallatin had predicted, and neither were settlers induced to buy. Income from land sales was reported by the Treasury Department to be $4,836 in 1796, $83,540 in 1797, $11,963 in 1798, and $843 in 1799. Elsewhere Gallatin stated that 121,540 acres had been sold before May 1800, of which 72,974 acres were sold in New York, 43,446 in Pittsburgh, and 5,120 acres in Philadelphia. Obviously changes in the land act would be necessary if the promise of large revenue from the public lands was to be fulfilled.[19]

In the sale of its land the government had to compete with two major land settlement companies in Ohio, with the great Holland Land Company in New York and Pennsylvania, and with influential investor-developers such as Nathaniel Massie, Thomas Worthington, Duncan McArthur, and a score of other large owners of land in the two military tracts of Ohio. All these men had acquired their lands so cheaply—in the military tracts the cost seems to have been from 10 to 50 cents an acre—that they could undersell the government. They maintained local offices and agents in the vicinity of their lands whereas much of the Federal land had to be offered for sale outside the territory. They were developing their tracts by laying out towns and cities, marking out trails and building roads, constructing buildings, clearing and improving the land, and actively soliciting purchasers, whereas the government could only survey. They could sell on longer credit, as much as 6 and 8 years, and would divide their holdings into small lots to suit purchasers. They would accept wheat, corn, rye, whiskey, bacon, and even cows under 7 years of age and young steers in payment and had agents in various communities prepared to credit debtors for the goods they brought in. Some could even accept farms in the East for their land. With all these advantages it is understandable why immigrants came not to the public lands of Ohio, but to Cincinnati, Marietta, and Chillicothe, in the heart of the private land holdings.

Disappointment with the immediate results of the Act of 1796 led Congress in 1797 to consider liberalizing it by allowing purchasers 4 years instead of one in which to complete their payments, permitting sales of 640-acre tracts in the townships held for sale in 5,120-acre units, and accepting United States stock in payment. The first proposal would make investments in land more attractive to moneyed men, the second would ease the route to ownership for the small man, and the third would reduce the cost of land by 20 percent because of the current depreciation in the stock. The second and third proposals were rejected, though the House favored reducing the size of tracts eligible for

[18] The structure of the General Land Office has been studied by Francis H. White, "The General Land Office, 1812–1911" (Ph.D. dissertation, Harvard University, 1912), copy in the National Archives; Milton Conover, *The General Land Office: Its History, Activities and Organization* (Baltimore, 1923); and Malcolm J. Rohrbough, "The General Land Office, 1812–1826: An Administrative Study" (Ph.D. dissertation, Wisconsin, 1963). Donaldson, Hibbard, and Robbins also are useful.

[19] *American State Papers, Finance*, II, 919; Henry Adams (ed.), *The Writings of Albert Gallatin* (3 vols., Philadelphia, 1879), III, 221–22.

sale. No further action was taken on the proposals, but all three found their way into the Land Act of 1800.[20]

Harrison's Frontier Land Bill

William Henry Harrison, Ohio Territory's first delegate to Congress, brought to his new position in 1799 an awareness of the advantages the private land agents enjoyed. He was disturbed that large areas of Ohio to which the Indian title had been surrendered were not drawing population or were attracting only squatters who often made only insignificant improvements. He thought it would be far better for Ohio if these neglected areas were made more attractive by building roads to them, opening land offices in their midst, offering the land on more generous credit terms, and reducing its price. Harrison was made a member of a committee to draft the new land law. When reported on the floor of Congress, it included provisions that recall some proposals Gallatin had made earlier. The Act of 1800 did not receive the attention that the Act of 1796 did at the hands of the editor of the *Annals of Congress*, and we cannot follow in the same degree the various views brought out in debate.

The major objective of the West was preemption, the right of a settler to proceed upon the public lands, improve them, and later acquire them at the minimum price without having to worry that a speculator might outbid him at the auction. Almost from the inception of the new government, petitions began to come in from the West pleading for this right. Harrison was no egalitarian and his bill, as reported to the House, contained no provision for preemption. However, William C. C. Claiborne, a Jeffersonian Republican from Tennessee, proposed an amendment that would allow every head of a family who had made "an actual settlement or improvement on any part of the lands . . . and shall reside on the same" the right of preemption to a half-section. Only 17 members of the House voted favorably, even Gallatin opposing, though earlier in the session he had presented a petition of 176 "actual settlers" of Jefferson County, Ohio, asking for the right of preemption.[21]

A special preemption provision was, however, included in the general Land Act of 1800, though it had very limited application. Persons who "before the passage of this act, shall have erected, or begun to erect, a grist-mill or saw-mill upon any of the lands herein directed to be sold, shall be entitled to the preemption of the section including such mill, at the rate of two dollars per acre."

Actually, Congress had previously enacted a special preemption act for the relief of settlers who had contracted with John Cleves Symmes for land which he had sold them, but for which he was unable to pay and to which he never acquired title. The Act of March 2, 1799, provided that these settlers be granted a "preference in purchasing all the lands so contracted for" at the price of $2.00 an acre and be given 2 years' credit.[22] Continued difficulty in settling the many problems growing out of the unbusinesslike way in which Symmes had conducted his affairs led to the enactment of a second measure "giving a right of preemption" to those purchasers to whom Symmes was unable to give a title. A later act, of March 3, 1801, excused the beneficiaries of this act from interest on their delayed payments until they became due, which was a considerable step in advance of the general Land Act of 1800.

Congress muddled along with the four reserved sections in the center of townships by authorizing the Surveyor General to lease them in sections or half-sections for not more than 7 years on the condition "of making such improvements as he shall deem reasonable."

If Harrison's Frontier Land Bill, as the Act of 1800 has sometimes been called, failed

[20] Downs, *Frontier Ohio*, pp. 116–17; *Annals of Congress*, 4th Cong., 2d sess., Feb. 20, 1797, p. 2209.

[21] *Annals of Congress*, 6th Cong., April 1, 1800, pp. 210, 652.

[22] 1 Stat. 728.

to live up to its title, it did go some distance in meeting the recommendations of forward-looking men who understood western needs. It provided for the opening of four land offices, as has been seen, set the dates for the public sales, ordered those townships which under the Act of 1796 were required to be sold in quarter-townships to be surveyed into sections and half-sections and offered for sale in 320-acre lots.

No concession was made on price in 1800, $2.00 being retained as the minimum, but an 8 percent discount was allowed on three-fourths of the amount due if paid in advance. A major change in credit terms permitted the buyer to pay one-twentieth at the time of purchase, one-fourth in 40 days, a second fourth in 2 years, and the third and fourth installments in 3 and 4 years. Harrison fought hard to retain provisions in the House bill that would have required no interest except on delinquent payments (and would have permitted all lands to be sold in 320-acre tracts), but the Senate was obdurate, insisting in conference that 6 percent interest should be paid on all but the first payment and that land east of the Muskingum should be sold only in 640-acre tracts. In a political report to his constituents Harrison appeared unhappy about the retention of the $2 price for land but declared that "the time for making payments has been so extended as to put it in the power of every industrious man to comply with them. . . ." He also commented favorably on the change from the "odious circumstance of forfeiture, which was made the penalty of failing in the payments, of the old law. . . ." Purchasers were now allowed a fifth year in which to complete payments; if not then accomplished their tracts were to be offered at public auction "and after the public have been reimbursed, the balance of the money is returned to the purchaser."[23] Harrison left his readers with the impression that forfeiture was entirely abolished in the new measure but he was not quite correct. Not only was the government to collect all delinquent charges plus interest and the "expenses of Sale" before returning anything to the delinquent debtor, but in the event that no bid covered all these items the tract was to be forfeited to the government and all payments made on it were also to be forfeited.

Objections to Land Policy in Northwest Territory

In a communication of January 13, 1803, Gallatin summarized some of the complaints against Federal land policy in the Northwest Territory. The $2.00 price he declared to be "advantageous to the population and prosperity" of the people, as it "effectually destroyed the monopoly of lands, and throws the land exclusively in the hands of actual settlers." He conceded, however, that the price was regarded as too high and that the many fees charged for services were burdensome. Modest relief could be granted by abolishing fees and giving the land officers salaries of $500 in their place. He did not recommend any change in price.[24] Had he watched more carefully the reports of land sales coming in from the registers and receivers of the Ohio land offices, he would have been aware how wrong he was in saying that none but actual settlers were acquiring land, unless by actual settlers he simply meant local residents. In December 1803 he reiterated his statement that the high price was preventing the establishment of land monopolies and large speculations and expressed fear that a reduction in the price might stimulate the movement of population westward to a dangerous degree, would be harmful to private landowners, and would encourage speculative purchasing. He was troubled about the growth of a debtor class owing the government, and favored shorten-

[23] Harrison to his constituents, Philadelphia, May 14, 1800, in Logan Esary, *Governors Messages and Letters. Messages and Letters of William Henry Harrison* (2 vols., Indianapolis, 1922), I, 13.

[24] *Annals of Congress*, 7th Cong., 2d sess., p. 1332.

ing the period of credit to 40 days. He advocated reducing the smallest unit of sale to 160 acres and paradoxically was willing that half-sections should sell for $1.25 an acre and quarter-sections at $1.50 an acre. To compensate earlier purchasers for the lower price, he proposed striking off the interest to debtors who were not delinquent.

A more pointed analysis of the faults of the land system came from John Boggs, and 323 other residents of Ohio. After expressing "their Humble thanks" to Congress for the Harrison Land Act, which allowed sales in 320-acre tracts, Boggs and his fellow Ohioans in 1801 petitioned for a preemption right for "the poor Industrious settlers" with their "small improvements, made at a great expence, and labor, emigrating so far thro' a Wilderness without inhabitants, and having their Provisions as well as families to Transport, and oftentimes hazarding their lives from the danger of the Savages, and have now formed considerable settlements, should still be exposed to a Publick Vendue to be outbid by an unfeeling Land-Jobber or Speculator, who perhaps has been preying on the Vitals of his Country. . . ."

In a second petition of December 23, 1803, the signers maintained that a 320-acre tract selling for $2 an acre was beyond the reach of most settlers and only provided profits for speculators who bought to retail to them. They objected to the interest charge on installments, which was contrary to local custom, and pointed out that many people had sold their land in the Atlantic states on long payments without interest and were hard hit by the government's exactions, the more so as they had to pay a higher price for the land they bought than any state in the Union was asking for its uncultivated land. The requirement that fractional sections should be sold only with an adjoining section or half-section was an unnecessary hardship which only discouraged purchases. They urged that the reserved sections be offered for sale, that entry and patent fees be abolished, and that patents be obtainable from the local register instead of from the Seat of Government.[25]

Steps to Liberalize System

In 1804 Congress responded to some of the pressures being exerted in favor of further liberalization of the land system by an act that reduced the minimum amount of land one could buy to a quarter-section (160 acres), extended credit to purchasers buying within the original boundaries of the Symmes contract to 6 years, and abolished interest on installments until they became due. In addition it authorized the survey and sale of all lands north of the Ohio to which the Indian title had been surrendered, and provided for the establishment of additional land offices at Detroit, Vincennes, and Kaskaskia. The four sections in each township, not including section 16 which had been reserved from sale since the Ordinance of 1785 was adopted, were to be sold like all other public lands. A feature of the land system that had been greatly disliked was thus ended.[26] An amendment of 1808 to the Act of 1804 set a price of $4 an acre on reserved sections not previously sold.[27] In this way Congress achieved what it may have had in mind at the outset in retaining these sections: reaping a profit from surrounding development. The Act of 1804 ended for the time-being the practice of charging fees, which was so greatly disliked. To make the positions of register and receiver more attractive, an additional one-half of 1 percent of all sums derived from sales in their offices was to be paid each, together with a salary of $500. Thereafter the offices were quite remunerative, particularly in periods of active sales, and they became important features of the patronage system.

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[25] Carter (ed.), *The Territorial Papers of the United States*, III, 122–28; *American State Papers, Public Lands*, I, 163–64.

[26] Act of March 26, 1804, Feb. 29, 1808, 2 Stat 277.

[27] Act of Feb. 29, 1808, 2 Stat. 470.

By reducing the unit of sales from townships and quarter-townships to tracts as small as 160 acres (in 1817 and 1820 to 80 acres), setting up local land offices, providing a wide choice of settlement by ordering surveys well in advance of actual demand, granting credit to small as well as to large buyers, abolishing interest on installments until they became due, and ending the elaborate fee system, Congress had done much to please the West. It still had a long way to go, however, to equal the ease with which land could be acquired in the colonial period, to guarantee settlement improvements to squatters, or even to reduce the price of lands to levels more competitive with those in other areas.

Some Effects of the Liberalization

Gallatin and Harrison had rightly prophesied that land sales would quickly increase if the size of the tracts that could be purchased were reduced, if longer credit were extended, and if land offices were opened in the tracts being sold. From practically nothing, sales shot up to 396,646 acres in 1801, 340,000 in 1802, 199,080 in 1803, and 373,611 in 1804, and for the balance of the decade did not fall below 143,409 acres annually. Collections reached a high of $850,106 in 1806. Forfeitures were few but collections began to fall into arrears after that date. These were good years, during which there was a sizable surplus of Federal revenues, more from customs collections than from land. Nevertheless, the receipts from public lands were doing in a small way what Congress had pledged them to do, reduce the Federal debt.

New customers attended the land offices, people of some means and large ambitions to make money, others eager to create farms for themselves. These two classes of purchasers—business economists call the first "petty capitalists"—plus the larger and better financed speculative purchasers that Hamilton wanted to attract, have been the subject of much historical speculation, but not much actual statistical examination. Some writers have suggested that many, if not most, of the original purchasers of land who bought from a quarter-section to a full section were speculators who were prepared to sell when opportunity offered, and had no intention of developing their land themselves. They can cite contemporary writers and travellers who observed that every man had a price for his farm and was prepared to sell and try farm making again elsewhere. This does not prove that every pioneer in the West was a speculator for there were other factors which induced men to sell, including heavy mortgage payments, dissatisfaction with their choice and a hope of finding better land elsewhere. That there were numerous absentee speculators who were investing funds through others and who hoped for a quick turnover to avoid taxes, interest, and expensive agents' costs is clear from an examination of the abstracts of land entries of different land offices, now in the National Archives. Also it is clear that, as anticipated by Hamilton, many persons bought land to retail to settlers in small quantities in accordance with prior agreements.

Annual Sales of Public Land and Collections North of the Ohio[a]

Year	Acres	Price	Collections
1801	396,646	$834,887	$248,461
1802	340,000	680,000	220,867
1803	199,080	398,355	245,999
1804	373,611	772,851	431,029
1805	619,266	1,235,953	575,859
1806	473,211	1,001,358	850,106
1807	284,180	688,610	680,861
1808	195,579	433,444	545,087
1809	143,409	355,783	484,752
1810	156,017	449,502 (344,256)	610,317
1811	207,017	449,502	599,773
1812	391,664	849,632	746,897

[a] Compiled from the Reports of the Secretary of the Treasury in *American State Papers*, *Finance*, Vol. II.

Another table showing the sales by states is in *Senate Documents*, 27th Cong., 3d sess., 1843, No. 246, pp. 3ff. The totals are different, perhaps owing to the use of different fiscal years.

Analysis of the land entries for the years 1801–06 in the four offices of Marietta, Cincinnati, Chillicothe, and Jeffersonville is useful in testing out some of the preconceptions of the time. For example, Gallatin had been convinced that a high price would discourage speculation and allow the lands to be taken up and purchased by settlers as their resources permitted. There was general agreement that the $2 price was high, but did it discourage speculation? The answer is a qualified no. True, no great land companies such as the Ohio Company and the Symmes Associates purchased a million or more acres, but men of substantial means began buying at the first auctions and their holdings ran to a considerable figure. Belazeel Wells, a local judge and founder of Steubenville, entered 24,000 acres, some of which reverted to the United States. Henry Massie, owner of 48,325 acres in the Virginia Military Tract, entered 7,328 acres partly with others. Thomas Worthington, one of the largest landowners in the same tract, entered 6,587 acres, part of which seem to have been owned jointly with others. Elias Boudinot, a New Jersey politician who was deeply involved with Symmes in land deals, entered 2,000 acres. John Smith, United States Senator from Ohio, entered 30,000 acres. Altogether some 200,000 acres, or 8 percent of the total acreage sold in the Ohio country between 1800 and 1806, were acquired in lots of two or more sections (1,280 acres) for investment. In accordance with Hamilton's notion of the capitalist being the middleman between the government and the actual settler, many of the sales of 640 and 320 acres were doubtless partly for speculation, for large farms have never been characteristic of Ohio agriculture. For 1850, the first year for which we have statistics on the size of farms, the average size in Ohio was 125 acres. Pioneer settlers as a rule were not in a position to buy 320 or 640 acres, even on credit, and many purchases of this size were intended to be retailed to them in smaller quantities.

It is noteworthy that most of the buyers, whether they bought large or small tracts, either listed themselves as Ohioans or as residents of western Pennsylvania and Virginia. Aside from Elias Boudinot, Joshua Satterthwaite who listed himself from Burlington, New Jersey, and William Hough of Loudoun County, Virginia, all large buyers were from Ohio. This is in sharp contrast to the later periods of wild speculation in the thirties and fifties when huge quantities of land were bought by eastern capitalists.

Though speculation was not altogether discouraged, the reduction in the size of tract and the easing of the terms of credit brought into the market a new and larger class of purchasers who bought the greater part of the land being sold before 1810. On page after page of the abstracts of entries at the Ohio land offices, nothing but quarter-section entries appear—indicating that the small man was buying.[28]

These early auction sales in Ohio, it was thought, might produce competitive bidding and bring to the government substantially more than the minimum price of $2 an acre. They did no such thing in these early years. The land sold for the minimum price and, except for a few exciting auctions at a later date, this was generally true throughout the history of the public domain.

SALES OF PUBLIC LANDS AND AVERAGE PRICE IN THE NORTHWEST TERRITORY[a]

Year	Acres	Amount in Dollars	Average Price per Acre
1802	340,009	$680,019	$2.00
1803	199,080	398,161	2.00
1804	373,611	772,851	2.06
1805	619,266	1,235,953	1.99
1806	473,211	1,001,358	2.11

[a] Compiled from *American State Papers, Finance*, II, 7, 52, 112, 147, 211.

[28] Data concerning land entries is from the manuscript volumes of abstracts of land entries and receivers' receipts for the years from 1800 to 1820, in the National Archives.

Relief Measurements for Delinquents

The Ohio Enabling Act of March 3, 1803, was a notable victory for the state.[29] From the surplus lands of the United States Military District the state was to be granted an amount of land equal to one thirty-sixth of the District and one thirty-sixth of the Western Reserve. Since the United States owned no land in this last district, Ohio actually received as a result of this little bonus 106,666 acres more than the one thirty-sixth of its public lands. This was not all. Out of the surplus lands within the Virginia Military Tract, Ohio was to be given 116,777 acres, one thirty-sixth of the entire tract, for common schools. This tract was subject to entry only by holders of Virginia military warrants and from those entries there was no income to the Federal government. In this instance, therefore, the argument that by giving lands for schools the government was increasing the value and therefore the income from the neighboring land was without foundation.

As Secretary of the Treasury, Gallatin understandably was anxious to obtain funds from the public lands for the retirement of the debt. He was therefore troubled about the increasing numbers of delinquents. Yet, the statistics of land sales, cash paid, outstanding obligations and arrearages as of 1806 do not appear at all alarming today.

Acres sold, 1801–1806	2,400,814
Sale price	$4,922,404
Collections	$2,582,321
Amount owing	$2,535,188
Arrearages	$243,933

Collections slightly exceeded the remaining obligations and the arrearages were less than one-tenth of the amount due and one-twentieth of the amount for which the lands sold. During this period the experience of the government was probably fully as satisfactory as that of the contemporary Holland Land Company, which had the greatest difficulty in collecting from its delinquent buyers and was forced to take payments in produce and livestock, on which it lost money. Also, we know that the later land grant railroads went through much the same experience, and were disinclined to press their delinquent debtors too severely for fear of political repercussions.

The Act of 1800 required that the land of delinquents revert to the United States together with all payments made thereon and should be put up at auction and sold to any buyer willing to give the amount owing. If three of the four annual payments had been made, amounting to $1.50 an acre, and if improvements had been made on the land, all would thus be lost to the purchaser unless at the end of the fifth year he made his final payment. Congress was responsive to the plea for the relief of delinquents who had bought land in 1800 or 1801; in 1806 it suspended for a time the resale or forfeiture section of the Act of 1800 for persons who were actual settlers on the land at the adoption of this measure. This was the first of a long line of relief measures it was to pass.[30]

Accumulative Amounts Due on Land Sales and the Arrearages[a]

Year	Due From Individuals: Southwest Territory	Due From Individuals: North of the Ohio	Arrearages
1803		$1,092,390	$40,218
1804		1,434,212	176,778
1805		2,094,305	384,799
1806		2,245,557	243,933
1807	$111,913	2,153,306	315,312
1808	138,752	2,040,673	586,817
1809	273,482	1,912,703	886,841
1810	390,195	1,646,642	702,557
1811	474,541	1,496,371	656,603
1812	653,068	1,599,106	-------

[a] *American State Papers, Public Lands*, III, 420.

[29] 2 Stat. 173.

[30] Act of April 15, 1806, 2 Stat. 378.

ACREAGE REVERTED (NOT REPORTED BEFORE 1812)[a]

Year	Northwest Territory	Southwest Territory	West of the Mississippi
1812	94,075	5,529	
1813	123,571	1,607	
1814	33,648	2,475	
1815	42,435	2,615	
1816	54,008	95,143	
1817	79,287	23,613	
1818	46,221	53,787	
1819	153,309	137,179	74,532
Total	649,058	339,766	74,532

[a] *American State Papers, Public Lands*, III, 420.

The second relief act, approved March 2, 1809, allowed those who had purchased land before 1804 and whose contracts were in arrears an extension of 2 years for the final payment provided they had kept up their interest payments and their land had not been resold or forfeited.[31] In practice this act applied to purchasers who had acquired 320 or 640 acres. On April 30, 1810, there was strong sentiment in Congress for extending the relief provisions of this act to those purchasers of lands who had resided on their claims at least since 1809 and who were now in default, provided the lands had not been resold or forfeited. The 1-year settlement requirement seems to indicate that members of Congress believed that much of the land in default was held by persons residing on it. The House vote was 68 to 25 in favor of granting the 2 additional years in which the payments could be made. The opposition expressed deep concern at the increasing pressure being exerted on Congress for relief, feared that it was sure to become even greater as additional land was sold on credit. They favored ending credit sales and establishing a lower minimum price. Those supporting the relief measure attributed the need for it to the downturn of economic conditions resulting from the measures Congress had taken to strike at English commerce and felt that the purchasers of 1805 were as much in need of relief as those of the previous years.[32]

By 1812 the distress in the public land area, both north and south, was widespread. The usual petitions poured in on Congress calling for further extension of credit and for the grant of preemption. Two petitions expressed marked disagreement with the revenue feature of public land policy. One petition, numerously signed by people of western Pennsylvania, Ohio, and Illinois Territory, calling themselves the "True American Society," objected to this mode of land disposal. Their petition stated that they were poor and suffering while thousands of acres of public lands were unoccupied, and declared that "every man was entitled by nature to a portion of the soil" and that no man "ought to possess more than two hundred acres. . . ." Six days later a number of petitions urged that the public lands should be subject to lease by such persons, presumably those who could not raise the capital to buy them.[33] No action was taken on these petitions other than to refer them to the Committee on Public Lands.

Congress was more responsive to the appeals of delinquents. By an act approved April 23, 1812, it granted every purchaser of government land whose contract had been made prior to April 1, 1808, and did not exceed 640 acres, and whose lands had not been forfeited, 3 years from January 1, 1813, in which to complete payments. This measure was further liberalized by an Act of July 6, 1812, which extended the benefits of the previous measure to assignees of the origi-

[31] 2 Stat. 533.

[32] Act of April 30, 1810, *Annals of Congress*, 11th Cong., Part II, pp. 1999–2006, 2566–2567, 2 Stat. 591. The Senate vote was not recorded. House discussion on the measure in one of those rare occasions, appears in the *Annals*. Persons who had bought tracts not in excess of 640 acres which had reverted to the government because of default in payments and which had not been resold were permitted to re-enter those tracts and to have all their payments previously made reinstated on them and were given the same 2 years indulgence.

[33] *Annals of Congress*, 12th Cong., Part 1, pp. 1031, 1042.

LAND SALES AND COLLECTIONS[a]

Year	Acres	Dollars	Collections	Balance Unpaid
		North of the Ohio River		
1813	239,980	$560,540	$643,055	$1,483,861
1814	823,864	1,702,016	1,050,887	2,134,939
1815	1,092,979	2,285,680	1,256,733	3,163,936
1816	1,131,956	2,464,792	1,294,081	4,334,648
1817	1,414,952	3,090,868	1,797,719	5,627,797
1818	1,705,996	3,494,244	2,009,736	7,290,489
1819	2,064,177	4,939,658	2,387,187	9,868,295
		Mississippi and Alabama		
1813	30,260	60,658	83,452	630,274
1814	41,272	82,544	123,810	589,008
1815	27,254	54,508	111,784	531,732
1816	490,873	1,102,480	364,116	1,270,097
1817	617,090	1,677,903	546,492	2,401,507
1818	823,178	3,969,461	1,223,572	5,170,988
1819	2,278,045	9,705,889	2,773,722	12,132,362
		West of the Mississippi (Missouri)		
1819	1,133,424	3,036,246	833,541	2,219,871

[a] *American State Papers, Public Lands*, III, 420–21.

nal purchasers and to some who had purchased more than 640 acres. Original purchasers, or their assignees, who had lost their lands through forfeiture were allowed to re-enter them and to have the benefit of all previous payments together with the 3-year extension.[34] The same 3-year extension of credit was allowed purchasers who had bought their tracts before April 1, 1809, 1810 and 1811; in 1816 the same provision was extended to Mississippi purchasers only who had bought between 1811 and 1812.[35]

In summary, all purchasers of government land holding 640 acres or less that had been bought before April 1, 1811, were given either 2 or 3 years' additional time beyond the original 4 years in which to complete their payments. It is surprising that Congress should have continued the credit policy for so long in the face of the growing delinquencies and obvious need for relief legislation and, indeed, despite the repeated recommendations of officials that credit sales should be ended and the land system placed on a cash basis. Perhaps the explanation lies in the fact that although the West was experiencing some financial difficulties during the War of 1812, land sales continued to grow and increased rapidly after 1815; members of Congress therefore preferred to make no fundamental change but to rely on simple relief measures to help the distressed.

[34] 2 Stat. 712, 782.

[35] 2 Stat. 811; 3 Stat. 97, 201, 300.

Ohio Grows Through Troublesome Times

Disputes with Spain over the right of deposit at New Orleans, the embargo on trade, the approaching conflict with Great Britain, the depression, and credit problems did not

slow the growth of Ohio and Indiana. During the years 1800 to 1820 Ohio added to its population more people than any other state with the exception of New York, which already had a large start. The population increased from 45,365 in 1800, to 230,760 in 1810, and 581,434 in 1820. The Ohio fever was at its height, drawing settlers from all the older states to the country which land companies were picturing as a veritable Garden of Eden. Government land sales in Ohio reached their peak in 1815 when 831,098 acres were sold. After this date interest in Ohio land declined. The northwestern part of the state was later tied up in donations for internal improvements and the best of the land elsewhere was gone. The attention of speculators and settlers shifted to Indiana, Illinois, and Missouri.

Some well known names appear among the large purchasers in Ohio in the flush times after 1812. For example, Nicholas Longworth, founder of a family long prominent in the Cincinnati area, individually and with others entered 12,558 acres in 1817. Oliver Spencer, a member of the Symmes group, bought 30,500 acres in the Cincinnati land district in addition to his earlier purchases; Samuel McCord entered 18,670 acres; Jacob Burnet, another associate of Symmes, bought 14,108 acres; Lewis Davis acquired 12,800 acres, partly in Indiana; and William Henry Harrison, a prominent territorial official and later, President, purchased 7,393 acres in the two states. But most of the credit sales in this state were of small tracts to individual purchasers. The inflation and boom conditions of 1816-19 did not get out of hand in Ohio as much as they did in the public land areas farther west or in Alabama, and the readjustments and contraction of the years 1819 to 1825 were not as serious in their effects.

Southern Indiana, which was opened to sale in 1805, followed much the same pattern. Numerous speculative purchases were made but not for very large quantities. During the period of credit sales 81 individuals purchased a thousand acres or more, 24 purchased 2,500 acres or more, and seven purchased 5,000 acres or more. Less than 10 percent of the land sold in the territory was acquired by large buyers. One of the more interesting of the large purchases was that of George Rapp and his associates who acquired 12,340 acres for their experiment in communal living.

Birth of King Cotton

With peace in 1815 came a big European demand for American wheat, flour, tobacco, rice, and above all cotton, the price of which reached the highest point it ever attained. Cotton, which brought 8.9 cents a pound in 1811, reached 27.3 cents in 1815, and 29.8 cents in 1817. Such prices led planters to expand their acreage in cotton as rapidly as their supply of capital, labor, and land permitted. Production moved upward rapidly from 208,986 bales of 400 pounds in 1815 to 349,007 bales in 1819. The crop of 1811 was worth $9,717,960 while that of 1817 was worth $31,684,494. Such a phenomenal increase in the value of cotton and the expansion in the production and export of other farm commodities created a period of unparalleled prosperity that was compounded by the rapid increase of banks and of paper currency.

All parts of the country felt the effect of rising price levels and favorable crops. Planters, concentrating upon cotton, sugar, rice, and tobacco production, were buying the wheat, flour, ham, bacon, and lard of the Ohio Valley and bringing them down the Mississippi by the new steamboats that were just entering their period of glory. Farmers in the Ohio country were buying more manufactured goods from the Northeast, as were also the southern planters.[36]

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[36] Statistics of prices and crops are from Lewis C. Gray, *History of Agriculture in the Southern United States to 1860* (2 vols., Washington, 1933), II, 1027, and from *Historical Statistics of the United States* (Washington, 1960), *passim*.

This combination of circumstances set in motion a stream of settlers and speculators moving South or West, anxious to acquire the newly opened land in Illinois, Indiana, Missouri, Mississippi, and especially in Alabama, where it was presumed that most land was suitable for cotton production. Heretofore the many private land claims in Alabama inherited from the British, Spanish, and French periods and the reluctance of the Indians, notably the Creeks in central Alabama, to surrender their holdings had delayed the survey of public land areas adjacent to the private claims and consequently the opening of those lands to sale and settlement.[37] However, western pressure led to the rapid extension of surveys in Alabama and the opening of 8,600,000 acres to sale by 1819. Sales in Alabama were moderate until 1816 when they reached 209,000 acres, expanded to 403,000 acres in 1817, to 1,425,436 in 1818, and to 1,259,023 in 1819, exceeding those in all other states or territories.[38]

Period of "Unexampled but Deceitful Prosperity"

It was not so much the extraordinary size of sales in Alabama that made them unique as it was the exciting competition which collapsed the "rings" and drove prices to fantastic heights, beyond any economic justification. For example, between November 24, 1817, and April 10, 1819, John Brahan bought a total of 44,647 acres for $318,579, or an average of $7.13 an acre. He acquired 83 tracts, mostly 160 acres each, at $2.00 an acre, but high bids on other tracts raised the average price of his purchases. Twenty-eight quarter-sections were purchased for $20 to $29 an acre, two tracts for $30 an acre, and the balance for prices from $3 to $19 an acre. That Brahan was a receiver of the Madison Land Office, where the demand for land had reached the greatest pitch of excitement, and had retained $81,963 of public money with which to carry on his private land business while he was still performing his public functions, might well have led the General Land Office to take greater care in supervising its operations. In addition to default, Brahan was accused of "improper conduct, violation of official trust" and dereliction of duty and was removed from office. He was permitted to assign to trustees the thousands of acres and town lots he had bought with government funds and was even permitted to use some funds to speculate in cotton in the hope of making sufficient money to discharge his delinquency. He escaped any formal charges because of his willingness to make amends and the fact that he was vouched for by prominent leaders.[39] He was not the first defaulting receiver of public money but was the largest in this early period. The number of defaulting land officers was to reach a high point in the Jackson and Van Buren administrations.

Examination of the purchases at northern Alabama sales reveals that the bulk of them were made for speculation, not for settlement and improvement. Ten individuals entered 154,000 acres and 216 bought over a thousand acres each. At one public sale of former Creek land at which 81,000 acres were purchased, only 7,500 acres were taken in parcels less than 320 acres. One may wonder where the pioneer settler could fit into such a picture, except to buy from speculators at their price. Events similar to those in the Alabama land offices in 1818 were later to occur elsewhere

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[37] David Lightner, "Private Land Claims in Alabama," *Alabama Review*, XX (July 1967), 187–204.

[38] Figures of the acreage offered for sale are from Mary E. Young, *Redskins, Ruffleshirts and Rednecks. Indian Allotments in Mississippi and Alabama, 1830–1860* (Norman, Okla., 1861), p. 175.

[39] Brahan's holdings and the prices paid for them are given in *American State Papers, Public Lands*, III, 552–60. Brahan was apparently operating in part for others for notes to more than $40,000 were assigned to trustees along with his 44,647 acres on which he had paid only $78,901 of the total purchase money.

as a result of the same set of circumstances: careless banking and currency policies, temporarily favorable agricultural prices, opening of new lands to speculative purchasing before there was any real demand for them from settlers. It was to take a number of such catastrophies similar to that which struck the Alabama speculators before sounder practices were to be followed.

In the Huntsville district bordering on the Tennessee River, where Brahan's acquisitions were located, and in the Creek lands in central Alabama, a total of 2,453,506 acres was sold for $12,535,443, or an average price of $5.10 an acre, from January 1, 1807, through 1820. When the Alabama Legislature later appealed to Congress for mercy for the debtors who had bought these lands at such high prices, it referred to the "infatuation produced by the period of unexampled but deceitful prosperity. . . ." The high cotton prices had given a "fictitious value to every article of merchandise, and to wild and unsettled land in the Mississippi Territory a supposed value beyond that of the best improved lands in the most populous parts of the United States."[40]

Included in the acreages acquired by Brahan and other speculators there was doubtless much very good land that might produce a bale of cotton to an acre. But it was to take much labor and capital to clear the land, drain or install levees in alluvial land, build fences, plow and prepare the land for crops. The capital costs proved to be heavy and losses of labor (slaves) from malaria, typhoid, cholera, and yellow fever were high. For the moment the cost of the land did not seem excessive to those bidding for it, but the day of reckoning came swiftly. Overexpansion of cotton production reduced prices; Europe decreased her purchases of American staples; banks began calling in their loans and soon were in financial difficulties that forced many of them to close; credit was no longer available; land became a drug on the market. Tracts that earlier had sold on credit for the prices Brahan had paid now went begging. The Panic of 1819 was followed by a long slow period of readjustment.

Most disillusioning to Congress, the officials of the Treasury Department and the national administration was the tremendous debt owed by western land buyers. In 1819–20 they owed the government more than $24,000,000, "a fearful sum," said Senator John W. Walker of Alabama, where the largest proportion of the debt was owed.[41] In the excitement of the time the buyers had bid the price up to levels not justified by any use to which the land could be put. Only liberal treatment of the debtors could save the West from bankruptcy.

In the height of the excitement about acquiring lands in the West, when banks were pouring out their paper notes in ever increasing quantities, and land purchases were breaking all previous records—reaching a million acres in 1816, 2 million in 1817, and 5,475,648 acres in 1819—Congress still found it necessary to postpone the forfeiture and resale feature of delinquent contracts in 1818, 1819, and 1820. None could doubt that there was an abundance of money and credit but it was being used to pyramid holdings, without regard to the possibilities of a decline, rather than to retire outstanding obligations.[42]

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[40] Memorial of the Alabama Legislature, Jan. 14, 1826, in *American State Papers, Public Lands*, IV, 528. Long after the Act of 1821 with its right to relinquish part of the *land* bought of the government and to have all payments applied to the remainder had lapsed some of these land buyers were still trying to salvage a larger part of their holdings than the act permitted.

[41] *Annals of Congress*, 16th Cong., 1st sess., Vol. 1, pp. 444, 448, 481. The amount owed the United States for land was $23,100,615 on June 30, 1820, and $21,173,489 on Dec. 31, 1820. Of the latter amount $11,229,685 was owed for land in Alabama; $2,527,008 for land in Ohio; $2,360,856 for land in Missouri; $2,219,168 for land in Indiana. *American State Papers, Public Lands*, III, 645; and *Finance*, III, 645.

[42] Acts of April 18, 1818, March 3, 18, 19, and March 30, 1820, 3 Stat. 433, 509, and 555.

Land Reforms Attempted

Early in 1819, Jeremiah Morrow, who had represented Ohio in Congress since its admission and now was Chairman of the Senate Committee on Public Lands, reported a bill to end credit sales and reduce the price of land to $1.50 an acre. He said that experience had exploded the view of Gallatin that a high price for land would discourage injurious speculation and land monopolies. In practice it had prevented the "industrious class, with small means . . . from becoming purchasers, with a view to settlement and cultivation." Subdivision of the lands (into sections, then half-sections, finally quarter-sections, and in 1817 into half-quarters for certain tracts) had prevented speculators from monopolizing sales, he maintained, and he favored the general offering of land in units of 80 acres.[43] Morrow had labored hard and effectively to ameliorate the rigidities of the land system for the benefit of small farmers of the West. However, parts of Ohio by 1819 were passing out of the frontier stage and its Congressmen were somewhat less representative of the thought of western pioneers than was Ninian Edwards, Senator from Illinois, a truly frontier state just admitted into the Union.

Edwards was pictured many years ago by Solon J. Buck as a persistent speculator, though the evidence offered suggests that he bought and sold town lots rather than unimproved land.[44] Whatever the size of his dealings, Edwards now constituted himself the representative of the settler who was squatting illegally on the public lands, hopeful of gaining a preemption right to his small tract without having to bid for it against men of capital. Credit could well be abolished, thought Edwards, but it still was essential to enable the squatter to purchase his preemption and to become a landowner instead of a tenant. Failing in his first move to retain credit for actual settlers, Edwards moved an amendment to increase the price of land in direct ratio to the size of the purchase, with 80 acres to sell at 50 cents an acre, a quarter-section to sell at 75 cents an acre, and a section to sell at $1.00 an acre. Other Edwards proposals would have allowed preemption to settlers on offered land, restricted purchases directly or indirectly to 640 acres, reduced the price of land to $1.00 an acre, and finally made the price $1.25 an acre. All were rejected and the Morrow bill was adopted, only to be defeated in the House.[45]

After the crash of 1819 Congress could no longer afford to dally on land reform. It was not only the terms of credit, the price, and the size of tract to be sold that needed alteration. Farther reaching reforms were needed so as to relieve debtors of obligations far beyond their capacity to pay in the foreseeable future.[46] Again Edwards of Illinois spoke for the squatters. He moved an amendment to a bill brought in by the Committee on Public Lands that would have allowed squatters settled on land already offered to purchase their quarter-sections on credit terms of 4 or 5 years. He wanted to shield the settlers upon public lands "from merciless speculators, whose cupidity and avarice would unquestionably be tempted by the improvements which those settlers have made with the sweat of their brows, and to which they have been encouraged by the conduct of the Government itself. . . ." The amendment was defeated 12–31 with affirmative votes coming

[43] *Annals of Congress*, 15th Cong., 2d sess., I, 215–18.

[44] Solon Justis Buck, *Illinois in 1818* (Springfield, 1917), pp. 75, 80, 153, 200.

Buck may have been the first person to use intensively the land entry books of land offices and his Chap. II, "The Public Lands," reveals an understanding of the public land system that was well in advance of anything else in print at the time. His map showing lands entered in Illinois in 1818, one of the few such maps in existence of any area, is the result of painstaking work in the entry volumes.

[45] *Annals of Congress*, 15th Cong., 2d sess., I, 241–45, and II, 1439.

[46] For the effect of the crash of 1819 on commodity prices see Thomas Senior Berry, *Western Prices Before 1861* (Cambridge, Mass., 1943), pp. 123, 124.

entirely from the West and South. Edwards then tried to add a preemption section to the bill. When it was defeated his colleague Jesse B. Thomas of Illinois gave notice that he would introduce a separate bill to give settlers on the public lands the right of preemption.[47]

As finally adopted, the Act of 1820 provided that beginning on July 1 full cash payment should be made on the day of purchase at the reduced rate of $1.25 an acre.[48] Naturally sales ceased as soon as the new price was made known in the West.

It was not a forward-looking, statesmanlike act, as had been the Act of 1800, which had provided for land offices centered in the midst of the public lands, reduced the size of tracts open to purchase, liberalized credit, and permitted private entry after the auction. In abolishing credit for all future buyers the act hurt the pioneer settler. He needed to buy his land on credit and to retain such capital as he still had on his arrival in the West to buy the necessary tools, seed, and livestock and to carry himself for a year or more until he could begin to draw his living from his land. Had the Act of 1820 included a preemption feature, it would have permitted such a settler to squat upon a tract of public land for a year or two while getting his operations under way and would have given him assurance that his equity in improvements would be protected until he could raise the funds with which to buy. Thus the measure would have met the settler's greatest need. But Congress was only interested in ending what it regarded as a disastrous credit policy, and it grudgingly agreed to permit sales in 80-acre tracts. Efforts to include a relief section which would have allowed debtors to surrender a portion of the lands they had bought and to have all their payments credited to the balance were defeated by some members of Congress who preferred to make the Act of 1820 a new departure in land administration, not cluttered up with provisions to aid debtors. Instead, as has been noted, Congress passed the last of its temporary relief measures, postponing the penalty clauses of the Act of 1800 for an additional year, and thereby putting off until 1821 consideration of a thorough revision of the laws dealing with delinquent land buyers.

The End of Credit

It was not difficult for Congress to agree upon a constructive relief measure in 1821; the authors hoped it would soon end the credit business in land. There was some opposition mainly related, however, to the method of providing the relief, not to the aid itself. The Act of March 2, 1821, provided that debtors could relinquish a portion of the land they had bought and have all the payments previously made applied to the remaining land. All accrued interest was forgiven. Those who had paid only one-fourth of their obligations were to be allowed to pay their balance in eight annual installments, those who had paid one half were to have 6 years to complete payments, and those who had paid three-fourths were to have 4 additional years for payments. The debts were to bear 6 percent interest but if the payments were made when due the interest would be forgiven. Persons completing payments on their original purchases by September 30, 1822, without the benefit of relinquishment, were to have a reduction of 37½ percent on the amount due.[49]

Not all land debtors were anxious to rush to the land offices to relinquish a substantial portion of their purchases in order to take advantage of the generous terms made available to them. In the first place relinquishment was not easy for those who just a few months earlier had optimistically bought their tracts believing that they would succeed, as

[47] *Annals of Congress*, 16th Cong., 1st sess., Vol. I, pp. 458, 483.

[48] Act of April 24, 1820, 3 Stat. 566.

[49] 3 Stat. 612.

others already had, in turning them over at a good profit. Prices were low after 1819, money was scarce, and goods in little demand in the West, but might not conditions revive soon? Secondly, while Congress had lowered the price of land to $1.25 an acre in 1820 and in the Act of 1821 had granted a remission of 37½ percent on the principal of contracts paid in full by 1822, it had not allowed this reduction to those debtors who relinquished a portion of their lands and took advantage of the long credits. On the other hand, there were some debtors who were so hopelessly in arrears and whose prospects looked so poor that in order to salvage anything from their investments it seemed wise to relinquish a large portion of their lands, reducing their obligations to a low annual payment. The peak of the land debt seems to have been reached on December 31, 1819, when it was $22,000,657. On December 31, 1820, it had fallen to $21,173,489. The big decline followed the adoption of the relief act of March 2, 1821. By September of that year the total debt was $11,957,430. A year later it had further declined to $10,544,454. Also, the 37½ percent discount was being taken advantage of by numbers of debtors so that by January 31, 1823, payments had been completed on 290,120 acres.[50]

Generous as these terms were, debtors who did not relinquish a portion of their lands or who failed to meet their payments under the Act of 1821 when due, were in danger of forfeiture and loss of previous payments. Further extensions of time in which to file application for relinquishment had to be allowed such debtors in 1822 and 1823. Then in 1824, with forfeitures and reversions again looming dangerously high, Congress allowed debtors who had already refinanced their obligations under the Act of 1821 or subsequent relief measures to relinquish a part of their land, provided the payments already made were sufficient to meet the obligations on the remainder, or that cash payment was made in full. In such cases the 37½ percent reduction would be allowed on the payment. An additional 1,140,749 acres were relinquished under this act and the outstanding obligations were down to $6,322,675 on June 30, 1825.[51]

Reversions and forfeitures continued notwithstanding additional extensions of relief measures. Consequently in 1826 Congress went still further in an Act of May 4, which allowed any person who had renegotiated his purchase contract, but had lost through forfeiture other tracts, to redeem them by paying the balance due, minus the 37½ percent. Finally, the ultimate was conceded by Congress in 1828 and 1832 when it provided that all persons who had lost money on land contracts through forfeiture should be granted certificates for their losses, receivable for the purchase of land (essentially land office money).[52]

The government's experience with credit sales ended in 1832. Both speculators and settlers had tried to acquire as much land as their resources and the credit allowed them permitted. The government had done nothing to discourage speculative purchases and in fact it had thrown open to entry huge areas and invited all to buy without limit. The advice of conservatives such as Hamilton—that surveys should be pushed slowly and the areas open to settlement restricted to make for more compact development—was disregarded. So also were the views of some westerners who thought limitations should be placed on the amount of land individuals could purchase to prevent absentee capitalists from monopolizing areas and to discourage local residents from overextending their commitments. Later, recognizing its responsibility for encouraging unwise purchases which the buyers found they could not

[50] *American State Papers, Public Lands*, III, 645; IV, 29.

[51] Act of May 18, 1824, 4 Stat. 24; *American State Papers, Public Lands*, IV, 770.

[52] Payson J. Treat, *The National Land System*, pp. 144ff.

carry after the Panic, Congress tried to make amends. Partial relinquishments with the application of all payments to the remaining lands, reduction of the price from $2 to $1.25 and the application of the difference to the remainder, continued extensions of credit, abandonment of interest, return of all forfeited payments in the form of land scrip, and finally granting purchasers the right to re-acquire forfeited lands by preemption were the remedies incorporated into 11 relief measures between 1821 and 1832. One thing had been learned: government credit was not again to be provided in the 19th century, though state banks were to make possible a second great era of land speculation in the thirties that exceeded everything done in 1816–19.

CHAPTER VIII

Cash Sales, 1820-1840

Until the 20th century, when income from mineral and grazing leases and fees assumed large proportions, the major part of the revenue from the public lands was obtained from cash sales of those lands. The previous chapter showed how the heavy debts inherited from the Revolution and the anxiety of Gallatin, Hamilton, and Jefferson to repay these obligations as soon as possible shaped early fiscal policy, led to the establishment of a high price for public lands and killed off any support for the more liberal policies of the colonial period. Credit had been granted purchasers by the Acts of 1796 and 1800 not so much to aid the pioneer settlers as to attract capitalists with enough resources so they could buy at least 640 acres (320 after 1800) and pay $1,280 or $640 in 1 to 4 years. As the size of the smallest units of entry was reduced to 160 and 80 acres, the credit policy did provide aid to the man with little capital but it seems to have persuaded him as well as the larger investor to purchase beyond hope of paying in the stipulated period.

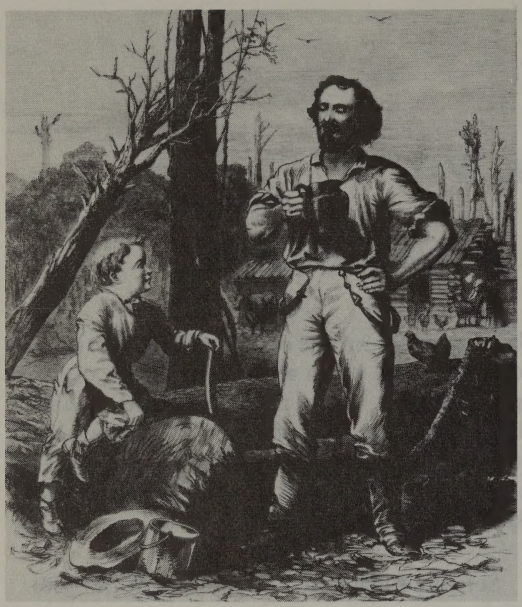
Credit in purchases of land from the government was ended by the Act of April 24, 1820. In its place the cash sales system was substituted, requiring full payment for the land on the day of purchase at all future sales of public lands. The public auction was retained; if land remained unsold after it had been offered at auction, it was open to private entry in unlimited amounts at the new price of $1.25 an acre. Lands which had reverted to the government through failure of the buyer to complete payments, and tracts which had been bid off at the auction and had not been paid for on the day of sale were to be put up at auction again and would not be open to private entry unless they had failed to find a buyer at the second offering. Also, lands open to private entry for which there were two applicants were to be sold to the highest bidder.[1]

Settlers Plead for Postponement of Sales

Pioneer settlers detested the public auction where government officials hoped the competition for land would be sufficient to produce prices higher than the minimum of $1.25 an acre. They wanted preferential treatment in the purchase of land which would, in effect, free them from competition and allow them their land at the minimum price. In the end they were to obtain this objective through a series of special preemption acts and finally by the prospective Preemption Act of 1841, as will be seen in the chapter on preemption. In the meantime they resorted to other means to protect themselves. They petitioned the President or the Commissioner of the General Land Office to postpone land sales, declaring that economic conditions were bad, prices low, money scarce, and that few settlers could raise the funds with which to purchase the land on which they had made their improvements. Pitiful details of poverty were usually included in these petitions and the fear that speculators at the auction would acquire the settlers' improved land was strongly emphasized.

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[1] 3 Stat. 566.



The Pioneer
Harper's Weekly, *Jan. 11, 1868*

Typical of these memorials is that of the Alabama Legislature of December 12, 1823. The usual tale of the misfortunes which had dogged the people and made it impossible for them to raise the funds with which to purchase their land, including the low price of cotton, the failure of the local banks to redeem their currency, and the refusal of the land officers to accept their notes, was followed by the statement that speculators would get the settlers' land unless postponement were granted or preemption permitted.[2]

In another memorial, dated January 18, 1830, the Alabama Legislature offered a different set of reasons for postponement of the sale of Jackson County lands. It argued that for several years past the cotton crops of that part of the state had been poor and that although the crop of 1829 had been abundant, it would be impossible to move it to New Orleans in time to use the proceeds for the sale. Also the grant for the improvement of the Tennessee River was just coming into market and for the two land sales to be held simultaneously would be a hardship to planters in that area, and would only "afford facilities for the combination of those harpies, the land speculators, who prey alike upon the Government, and upon the honest occupant of the soil." Most of the 12,000 people in Jackson County had been compelled "to seek an asylum on the public lands, from an inability to purchase elsewhere" and their continuance there had been by the sufferance of the government. To permit the sale now, said the memorial, would be to force them "shelterless from their cabins, with their wives and helpless children, at an inclement season of the year . . . ."[3]

A somewhat different type of proposal for postponement came from Indiana in 1847–48. As a result of intimate relations with a group of powerful Fort Wayne traders, the Miami and Potawatomi Indians had succeeded in retaining their lands along the Wabash long after other tribes in Michigan, Illinois, Missouri, southern Wisconsin, and eastern Iowa had surrendered their reservations. When the Miami lands were finally ceded in 1838 and 1840 they were in great demand. Squatters had established claims on them, townsite promoters were anxiously waiting to locate on them, and a variety of other speculators were eager to acquire them, both because of their location and because of the many improvements on them. When these lands were surveyed, Congress granted the settlers the right of preemption but it insisted that the price should be $2.00 an acre instead of the usual $1.25 an acre. This action produced three memorials from the Indiana Legisla-

[2] *American State Papers, Public Lands*, IV, 2. Also see memorials of the Alabama Legislature of Jan. 29, 1829, urging postponement of advertised sales in Jackson and Madison Counties and another of Jan. 31, 1835, urging postponement of sales of relinquished land. *Ibid.*, 147 and VI, 11.

[3] *House Reports*, 21st Cong., 1st sess., No. 97 (Serial No. 199), Jan. 18, 1830. On May 23, 1828, Congress granted 400,000 acres of relinquished land to Alabama for the improvement of the navigation of the Tennessee River, 4 Stat. 290.

ture dated December 16, 1847, January 13, and February 15, 1848, wherein postponement of the sales for 5 years was urged on the ground that settlers had thought the lands would not be offered until a much later period and that they had not the ability to pay for them. The $2.00 price was declared to be unwarranted and unjust and Congress was urged to reduce it to the regular minimum. Many of the settlers were said to have "bravely" volunteered in the Mexican War and it was suggested that they be permitted to use their military land warrants, then selling for less than a dollar an acre, to enter their lands.[4]

In her study of land speculation and Indian allotments in Alabama and Mississippi, Mary Young has shown that Jackson, who professed concern for the settler as against the speculator, nevertheless "put pressure on the General Land Office to accelerate the offering of land," that he refused to comply with an Illinois petition of 1835 urging the postponement of announced sales in Illinois, and that during his administration public land offerings in the two cotton states amounted to 19 million acres. In addition, during Jackson's administration several million acres of Creek and Chickasaw lands in Alabama and Mississippi were divided into individual allotments to members of these tribes. These allotments also passed quickly into the hands of influential white people, who thus acquired much of the best land in these two states. Professor Young raises the question of how one can reconcile Jackson's action with his anti-speculator professions in the Specie Circular!

On the other hand it is only fair to point out that during Jackson's second term, when sales were being made at an unprecedented rate, the acreage of new land proclaimed for sale was less than the quantity of land being sold. Furthermore, in 1836 when sales of public lands reached a figure never to be exceeded Jackson virtually ceased proclaiming additional land for sale, a mere 509,034 acres being offered that year as compared with 13,767,268 acres the previous year. Some additional Chickasaw trust lands were, however, offered at public sale in 1836 and 1837.[5]

After the Panic of 1837 it was extremely difficult for settlers to raise the necessary funds to purchase their claims because of bank suspensions, currency problems, and most of all, lack of demand for produce. From the point of view of the pioneers it was a most inappropriate time to hold public sales. When lands in the northern Illinois district were ordered into market in 1838 it was politically smart for the Whigs to charge the Van Buren administration with complete disregard and contempt for the welfare of the settlers. "The government wants the money, and no matter how it is wrung from the honest settler," said the *Quincy Whig*, in November 1838. Money it would have even though the settlers' improvements "may be jeopardized or seized by the rich speculator . . . ." (The same criticism was to be offered by the Republicans in 1858–61 when the Democrats were in power and were pushing large quantities of public lands into market in equally trying times.)[6] Those settlers in northeastern Illinois who were neither able to secure a postponement of the sale in 1839, nor to raise the necessary funds except at the "extortionary [sic] ruinous rates exacted by

[4] Act of Aug. 3, 1846, 9 Stat. 51; *Laws of Indiana, 1847–1848*, pp. 101, 104, 108. For the pressure to open the lands and something of their value see my Introduction to *The John Tipton Papers*, Nellie Armstrong Robertson and Dorothy Riker (eds.), (Indianapolis, 1942), *passim.*

[5] Mary Elizabeth Young, *Redskins, Ruffleshirts and Rednecks, Indian Allotments in Mississippi and Alabama, 1830–1860*, pp. 164–67, 182 ff. The statistics of proclamations and sales are from the *GLO Annual Reports.*

[6] Theodore L. Carlson, *The Illinois Military Tract* (Urbana, Ill., 1951), p. 53n; Paul W. Gates, *Fifty Million Acres: Conflicts Over Kansas Land Policy, 1854–1890* (Ithaca, N.Y., 1954), pp. 81 ff. In addition to public sales ordered held in Nebraska Territory, Minnesota, Iowa, and Wisconsin, Buchanan ordered 7,966,000 acres in Kansas Territory to be offered at auction, making a total of 46,422,000 acres ordered to sale.

lenders or 'pelt gatherers' " chose to risk the sale, hoping that nobody would bid on their claims. Their confidence, it appeared, was misplaced; not only did many settlers lose their land but speculators grabbed up much of the undeveloped land after the sale, and thereby kept immigrants who came to Illinois from obtaining it.

Farther west in the Burlington, Iowa district the local editor urged postponement of a sale proclaimed for 1839, citing the unhappy experience of the northern Illinois district where the amount of speculator-owned land was retarding development. He declared that in Iowa the time was not ripe for a land sale and that many of the 61 townships announced for this sale had little or no population. If the sale were held the land would fall mainly to speculators, thereby forcing immigrants to go farther west, and blighting "the growth and prosperity of those sections of country." In this instance the postponement was granted and the people were so delighted that they held a public meeting to express their appreciation to Martin Van Buren who "has shown a just regard for the interests and wishes of the settlers on the public lands." Over the course of many years, however, government officials became inured to these petitions which always arrived soon after the announcement of the sales had been posted.[7]

It was doubtless clear to the Washington authorities that many people making farms on public land prior to purchasing it were indeed compelled by circumstances to use what money they could raise for other purposes—such as buying a little hardware or glass for their homes, buying some livestock, essential farm tools and implements, lumber for fencing or construction, if on a prairie, and maintenance until crops came in. It was also clear that in good or bad times alike the scarcity of money would be offered as an excuse for postponing sales. But that settlers' pleas were disregarded is not correct. Six of the 36 public sales announced in Indiana were postponed.[8]

Interest in Early Sales

Postponement of public sales might be urged by others than actual settlers. A letter from the register and receiver at the Laporte, Indiana land office, dated February 11, 1839, described a "secret combination on foot to procure the postponement of a sale already announced." The leaders had made heavy investments in northern Indiana land in 1835 which they had not been able to resell at a profit and they feared they would not be able to carry their investment after 1841 when their land became subject to taxation. They were therefore anxious to sell and did not want competition from additional public lands. Consequently they were getting up a petition calling for postponement of the sales. The letter of the register and receiver, which showed that the petitioners were not poor settlers deserving of sympathy, sounds quite plausible and may present a fair picture of events; but it must be remembered that these local officers depended for their income upon the amount of business transacted and fees paid at the land offices and naturally they were not favorable to postponements.[9]

Other groups, in addition to the land officers, stood to benefit from early sales and were interested in hastening the offering of public lands. Among them were local bankers, moneylenders, the numerous land agents who represented them, absentee speculators, and indeed, some settlers who were anxious to get title to their land so they could borrow on

[7] *Iowa Territorial Gazette and Burlington Advertiser*, Aug. 24, 31, Oct. 26, and Nov. 2, 1839. Actually the first big sale had already been held at Burlington in November 1838, and 9 percent of the land had been acquired by loan sharks for settlers, as is shown elsewhere.

[8] Information provided by Stephen Strausberg from his examination of the proclamations and postponements of sales.

[9] Letter of Ed. A. Hannegan, Register, and Jesse Jackson, Receiver, Feb. 11, 1839, in N. Series, General Land Office Files, National Archives.

it to finance the purchase of machinery, livestock, or additional land. Daniel P. Cook, Representative from southern Illinois, wrote the Commissioner of the General Land Office on May 2, 1823, about the anxiety of the people to have the lands brought into market "as soon as practicable."[10] The Indiana Legislature, in a memorial of December 17, 1828, urged that the alternate reserved sections of land along the Wabash and Lake Erie Canal be offered at "immediate sale." The same year, on December 16, a memorial of the Louisiana Legislature asked for preemption, a reduction in the price of land, credit, speedy adjustment of the private land claims, and the donation of unsalable lands to the state; it concluded with the request that the salable lands not offered be brought into market as soon as practicable.[11] Finally, in 1833 the Indiana Legislature urged the "speedy survey and sale" of all the lands in the state to which the Indian title had been extinguished. Generally, it may be said that if conditions were good the people supported bringing the lands into market, but if they were unfavorable with little demand for produce, they urged postponement.[12] Jackson's decision to speed up the offering of land in Alabama and Mississippi came in a period of good times, whereas Van Buren's willingness to postpone a sale was in a year when economic conditions in the West were quite unfavorable.

The Hazards of Speculation

Men coming into a new community to buy quantities of land for speculation were regarded as intruders who would seriously retard the growth of the area for years by withholding land from development while they waited for its value to rise. James Flint, a traveller in the West in 1818–20, advised investors not to rely on local information concerning vacant land or prospects for rising values because the residents would

> . . . tell him with the greatest effrontery, that every neighbouring quarter section is already taken up. Squatters, a class of men who take possession without purchasing, are afraid of being turned out, or of having their pastures abridged by newcomers. Others, perhaps meditating an enlargement of their property, so soon as funds will permit, wish to hold the adjoining lands in reserve for themselves, and not a few are jealous of the land-dealer, who is not an actual settler, whose grounds lie waste, waiting for that advance on the value of property, which arises from an increasing population. The non-resident proprietor is injurious to a neighbourhood, in respect of his not bearing any part of the expense of making roads, while others are frequently under the necessity of making them through his lands for their own convenience. On excursions of this kind, the prudent will always be cautious of explaining their views, particularly as to the spot chosen for purchase, and without loss of time they should return to the land-office and make entry.[13]

Mrs. Caroline M. Kirkland, writing in 1845 of conditions in Michigan where keen resentment against speculators had developed, reflected this feeling, saying that speculators were considered "public enemies." Every obstacle "in the shape of extravagant charges, erroneous information, and rude refusal was thrown in their way." Much as they disliked the "gentleman speculator, they hated with a perfect hatred him who aided by his local knowledge the immense purchases of non-residents." Settlers who gave any aid to a landlooker were held to be guilty of treason.[14] A story has been retold many times of a resident of the Wabash Valley who, seeing a group of men riding toward his claim, assumed they were land hunters and determined to scare them off. This he did by

[10] Letter in "Miscellaneous Letters, C," GLO Files, National Archives.

[11] *American State Papers, Public Lands*, V, 583, 619.

[12] *Laws of Indiana, 1832–1833*, p. 242. Yet the Illinois Legislature of 1838 urged putting the remaining lands under survey immediately. *Laws of Illinois, 1838*, p. 298.

[13] James Flint, *Letters from America*, Reuben Gold Thwaites (ed.), "Early Western Travels" (Cleveland, Ohio, 1904), IX, 180.

[14] Mrs. Caroline M. Kirkland, *Western Clearings* (New York, 1845), pp. 2 ff and 6 ff.

running toward them shouting "Indians, the woods are full of Indians murdering and scalping . . . ." They fled, giving him time to get to the land office to file his entry, but the scare spread widely for a number of days.[15]

Westerners found other means of discouraging speculators. They raised the assessments on absentee-owned land, "hooked" the timber while conserving their own, pastured livestock on such land, and rejoiced to see it on the tax delinquent list and to have tax titles issued on it. The local owner of a tax title knew that if he made some improvements on an absentee-owned tract the patent title owner would either have to sell his right for a low figure or would have to pay for the improvements at the appraised value as determined by a local jury. Speculators who did nothing to develop their lands, which came to be known as "speculators' deserts," soon became aware of the deep prejudice against them and of the hazards of their trade.

A letter signed R.M. to Albert Gallatin, February 22, 1811, reported that a sort of noblesse oblige was practiced at that early time by men of means looking for land in which to invest. His letter written from Lancaster, Ohio, states:[16]

> It has been and still is customary for persons disposed to remove into a new country, to emigrate thither before the lands are offered for sale. They generally settle on the best tracts of land, and on those which be extremely valuable, without any improvement but which are rendered still more so by the labor of settlers. When the day of sales arrived, those who are wishing to purchase large quantities of land in order to profit by the enhancement of the price, generally conclude that it is unjust to bid against actual settlers. . . .

The speculators were reported to make up for their generosity by inducing settlers to bid the minimum price for other land that was worth $4 and $6 an acre, but for which there was no competition, and then to turn it over to the speculator who provided the money. The same commentator observed a practice that was common a few years later by which lands were bid "to a handsome price and struck off to the highest bidder" and then forfeited at the end of the day. The purchaser thus learned who his competitors were, visited them before sales opened the next day, and agreed with them that they would not bid against one another. In such ways, Gallatin was informed, the government was being defrauded of considerable sums of money.

The most widely used and finally institutionalized device to minimize speculation was the combination formed by prospective buyers of public lands to prevent competitive bidding at the land sales. One of the early instances of the use of intimidation to prevent competition occurred in the St. Stephen's land district of Alabama. When squatters who had made their selections of land and commenced their improvements learned that their claims would all have to go up to competitive bidding at the auction to be held in 1815, they angrily threatened "with assassination" any person who dared to bid against them for their claims. Correspondence from the St. Stephen's officers after the sale does not indicate whether the presence of a marshall prevented the squatters from carrying out their threats.[17]

Speculators' Organizations

During the cotton boom of 1815–19 prices of the staple reached a high point of 33 cents and land suitable for its production was everywhere in demand, especially in the Black Belt and the Tennessee Valley of Alabama. Speculators and planters from older cotton areas seemed willing to pay, if necessary, any price to obtain promising land. At the northern Alabama sale in Huntsville in 1818, prices were bid up to fantastic levels, one tract selling for $107 an acre. It was at this sale that Andrew Jackson bought 950 acres,

[15] Sandford C. Cox, *Recollections of the Early Settlement of the Wabash Valley* (LaFayette, Ind., 1860), p. 53.

[16] R. M. to Albert Gallatin, Secretary of the Treasury, Vol: "Miscellaneous Letters A," Treasury Annex.

[17] Carter (ed.), *Territorial Papers*, VI, 598–99, 618.

paying $10.50 an acre for one piece of 155 acres. John Coffee, who had surveyed the land and was an associate of Jackson, bought 22,887 acres.[18]

At the same time another public sale was under way at the St. Stephen's office. Here there was little frantic bidding, as a result of an agreement among buyers not to bid against each other. This was at first unnoticed, so the officers said, but after a time they woke up to the fact that a full-fledged combination of buyers was in control of the sales about which they could do little. In their report they said:

> By the exertion of a few speculating Gentlemen a coalition was formed with all the men of any tolerable capital and who were disposed to purchase lands. Each deposited a given sum and became pledged to act in concert a few were appointed to manage the funds, and in this manner Competition was in a considerable degree silenced. Many of the lands were in consequence purchased at low rates and after several Townships were offered public Resales were held by this association attended with the gain of Considerable profit. In a few cases a conflict between this Company and actual settlers has produced the Government extraordinary prices; This has resulted in Compromises in subsequent instances. . . . No mode of resisting its [the combination's] effects were in their power but exercising their private right of bidding up for the lands. Where the prices were known to be greatly inadequate; this was exercised in some cases by one of the superintendents.

Thus, to combat a major evil, the government official employed a doubtful and illegal procedure, to little good effect.[19]

Franklin E. Plummer later told much the same story of practices he had observed at land offices in the South but he was more severe in his criticism of the speculators who organized these buyers' combinations and refused credit to settlers unless they joined the combination and permitted it to buy their tracts, which were to be reconveyed to them at a stiff advance. Thus, said Plummer, the combination "grinds down and oppress[es] the citizens and defraud[s] the treasury of its just dues." Plummer, who was no admirer of the planter aristocracy, said this "is a species of swindling practices by those who profess to be gentlemen, and frequently on a fictitious capital. . . ."[20]

The pattern established in 1818 at the Alabama sales, where speculators organized to suppress competition, was followed in sales at the Columbus and Chocchuma land offices in 1833 in another period of inflation and rising cotton prices. Settlers whose improved land was being offered were forced to join the companies created there. Individualistically minded investors who did not at the outset cooperate with the company and tried to go it alone, found they had to pay higher prices and that it was cheaper to forfeit the lands on which they had been the successful bidders and to let the company buy them the next day at the $1.25 price. Though there was competition for some tracts, the Columbus and Chocchuma Companies effectively controlled sales on the bulk of the land.

The officers in charge of the Mississippi and Alabama sales were subsequently accused of showing gross partiality and favoritism by marking lands on the tract books with an "S" and holding them for favored buyers. Here was introduced a practice that was to be used increasingly by corrupt land officers. In other cases land was sold on credit but was not entered. After partial payments had been made and the land officers had been changed, the buyers found that all they had invested in the land was lost.

The Chocchuma and Columbus sales were among the most exciting in early American land history. Between 300 and 600 persons were generally in attendance, including members of Congress and of the Federal judiciary, and speculators from the East as well as from Georgia and South Carolina.

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[18] *Territorial Papers*, XVIII, 264, 300, 585; *American State Papers, Public Lands*, III, 552–60.

[19] Israel Pickens and William Crawford, Register and Receiver of the St. Stephens Land Office, May 2, 1819, to Josiah Meigs, *Territorial Papers*, XVIII, 617–18.

[20] *Register of Debates*, 22d Cong., 2d sess., March 27, 1832, p. 2262.

Robert J. Walker, later to be Senator from Mississippi, Chairman of the Senate Public Lands Committee, Secretary of the Treasury, and Territorial Governor of Kansas, was one of the chief organizers of the combination which dominated the sales. The notoriety of the sales led to a congressional investigation, which revealed that although members of Congress, the Chief Justice of the Court of Appeals of Mississippi, and the Federal Marshal were present, no one could recall that the provisions of the Act of 1830 had been read, as required by the instructions of the Commissioner of the Land Office, or that there had been protests against the clearly illegal actions of the combinations. It was also brought out that the register, Samuel Gwin, had left his office to buy some tracts and had resold them immediately at a 33 percent profit to settlers, but the only unusual feature of his conduct is that he was induced to admit his dereliction.[21]

The Claims Association

By 1824, combinations to prevent competitive bidding by speculators, which had worked too well from the point of view of the government, were adapted to the use of settlers. Sandford C. Cox, an eye-witness of a government sale at the Crawfordsville, Indiana office, wrote of the town being full of strangers when the sales commenced. The eastern and southern portions of the state were strongly represented, as well as Ohio, Kentucky, Tennessee, and Pennsylvania. There was little competitive bidding as "the settlers, or 'squatters,' as they are called by speculators, have arranged matters among themselves to their general satisfaction. If, upon comparing numbers, it appears that two are after the same tract of land, one asks the other what he will take to not bid against him. If neither will consent to be bought off, they then retire, and cast lots, and the lucky one enters the tract at Congress price—$1.25 per acre—and the other enters the second choice on his list." If a speculator "showed a disposition to take a settler's claim from him, he sees the white of a score of eyes snapping at him, and at the first opportunity he crawfishes out of the crowd. The settlers tell foreign capitalists to hold on till they enter the tracts of land they have settled upon, and that they may then pitch in—that there will be land enough—more than enough for them all." Across the Illinois line in the Springfield land district a traveller going through in 1825 learned there were 6,000 squatters "who are not recognized by the government, and who are determined to resist every intruding speculator who may attempt to eject them from it [their land]." The chief difference between the Huntsville combination and the Crawfordsville and Springfield combinations is that the former was composed of speculators and planters with capital whereas the latter were made up of actual residents, squatters, or small claim dealers planning to sell all or part of their land as soon as opportunity offered.[22]

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[21] The two sales at Columbus and Chocchuma attracted much attention from their completion for the large scale of the speculative operations, the quick and extraordinarily favorable profits the insiders enjoyed, the prominence of the men involved in the sales, and the detailed investigations conducted shortly afterward by the Senate. *H. Ex. Doc.*, 24th Cong., 1st sess., Vol. V, No. 211 (Serial No. 290), pp. 15 ff.; *American State Papers, Public Lands*, VII, 283, 377–507 and 732–77. For the purchases at Columbus and Chocchuma of Robert J. Walker, Malcolm Gilchrist, and other members of the companies, and the occasions when prices were bid up, see esp. pp. 377–447. Also, Gordon T. Chappell, "Some Patterns of Land Speculation in the Old Southwest," *Journal of Southern History* (November 1949), pp. 463–77; Young, *Redskins, Ruffleshirts and Rednecks, passim.*

[22] Cox, *Recollections of the Early Settlement of the Wabash Valley*, pp. 17–18; Monroe *Michigan Sentinel*, Sept. 16, 1825, quoting the *National Intelligencer*.

Harry Lewis Coles in his "History of the Administration of Federal Land Policies and Land Tenure in Louisiana, 1803–1860" (Ph.D. dissertation, Vanderbilt University, 1949), p. 210, found that the residents of the Ouachita land district of Louisiana who knew each other, being neighborly, agreed not to bid against each other at the land sales held in 1826 and 1829. Only two parcels of land at these sales brought over the minimum price.

Settlers had thus learned to organize combinations such as speculators had benefited from at the early Alabama sales, and molded them into an effective device to prevent men with capital from buying their improvements. A dispatch in the *Detroit Gazette* of 1829 leads one to wonder whether the squatters had so intimidated speculators that claim associations were really unnecessary, or whether the writer was gently avoiding mention of the intimidation and even violence that sometimes was resorted to against claim jumpers. The author was in attendance at the Monroe land sale at which squatters came from many miles around, fearing that they would lose their land and improvements. Some capitalists, he said, were prepared to pay $6 or $10 an acre for their claims. "But the speculators behaved honorably, and did not bid upon a single lot that was occupied."[23]

Plans for controlling the sales in the Cahaba district of Alabama in 1830 were brought to the attention of the officials in Washington by three disgruntled persons who may have hoped to speculate in the five townships to be offered. One of the writers reported that the land was "thickly populated by farmers, as wealthy, in the general, as any part of South Alabama." They had held a convention at which they resolved to prevent outsiders from viewing or exploring the land by force of arms, and had appointed bidders for each township to bid off the entire area the members wished bought. In a fair market the land would sell for $5 or $10 an acre, he said, but whether he was including the value of the improvements is not clear. One of the other writers said: "The general opinion is . . . that these men will murder any man, or set of men, who bid for this land against their body."[24]

The numerous accounts pouring in to members of Congress and the officials of the Land Office about the use of associations to prevent competitive bidding caused much concern in Washington where many men still thought of the public lands primarily as a source of revenue. Congress at the time was considering the relief act of 1830 to ease the path of those who had bought in the credit period, had forfeited a portion of their land, and now wished to buy it back when conditions were improving. Revenue advocates, and those members of Congress who wished for more order and less turmoil at the western land sales, combined to bring forth a measure "for the relief of purchasers of public lands, and for the suppression of fraudulent practices at the public sales. . . ." The latter part, which is what interests us here, declared that persons who combined to prevent competition at public sales of United States land by intimidation, combination, or unfair management should on conviction, be subject to a fine not exceeding $1,000 and/or imprisonment not exceeding 2 years.[25] This put teeth into the administrative regulations with which the Commissioner had previously supplied the local land officers. There is, however, little evidence that western people were intimidated by the law.[26]

There is an unusually interesting and realistic letter of May 15, 1833, from the Commissioner of the General Land Office, Elijah Hayward, to Louis McLane, Secretary of the Treasury, in which mention is made of a claims association in Alabama and of the

[23] *Detroit Gazette*, quoted in the *Michigan Sentinel*, June 27, 1829.

[24] *H. Ex. Doc.*, 21st Cong., 1st sess., Vol. IV (Serial No. 198), No. 109, 1830, pp. 4–6.

[25] Act of March 31, 1830, 4 Stat. 390–92.

[26] I have found little evidence in the correspondence of the General Land Office and the Treasury Department or in local newspapers that the statute of 1830 deterred settlers from combining to suppress competition for the purchase of land. There is a letter of James R. M. Bryan to E. D. Brown, Aug. 19, 1836, in the Comissioner's File, General Land Office Records, National Archives, in which the Land Commissioner is told that in anticipation of a public sale to be held at Crawfordsville, Indiana, handbills were posted throughout the region calling attention to a "combination" organized to obstruct competition; a copy of the handbill was sent to the General Land Office with the suggestion that it be brought to the attention of the District Attorney because of its obvious violation of the Act of 1830.

desirability of holding early sales in Alabama, Indiana, and Illinois. Hayward maintained that the longer the interval between survey and public sale, the greater the embarrassments

> . . . experienced by Settlers who build Cabins, for temporary residences, and commence clearing a particular tract in the hope of becoming the purchaser . . . at the sale. Meanwhile they naturally desire to adopt such means as are in their power, to prevent the tract occupied from being appropriated by another. This results in the establishment of certain rules of etiquette among them, whereby it is made a point of honor not to bid against each other for their respective improvements. When a large population stands thus affected it is futile to attempt to counteract such combinations, which have nearly the same effect on the sales, as the pre-emption privilege, but to a much greater extent.[27]

Such an admission of the futility of any attempt to prevent combinations from functioning at the public sales, just 3 years after Congress had taken a strong stand to outlaw them, is instructive.

Between 1824 and 1836 the claims clubs or settlers' or squatters' associations, as they were variously called, became institutionalized in somewhat the same way as the numerous anti-horse-thief associations, or the miners' camps of a later time. All were designed to meet pressing emergencies which existing political institutions did not, or were not able to handle. Settlers on a new frontier where pioneering was under way, whether farm making or town planning, soon made sufficient improvements that called for protection by the community. Squatters felt that their "right" to their claims should include protection against invaders or claim jumpers, the right to sell their claims, and the right to buy the land for its value before their improvements had been made at the usual government minimum of $1.25 an acre. As Ninian Edwards, Governor of Illinois Territory, said in 1812: "The United States would not wish to receive more than the value of the land in its unimproved State, or that its increased value from the improvements of others should fall into the hands of speculators. . . ."[28]

To protect these rights the earlier combinations of land buyers gradually developed into settlers' or claims associations, taking on more formality with constitutions and by-laws, regularly constituted officers (such as bidders and registers or recorders), committees to arbitrate disputed claims, and clearly stated objectives. In northern Illinois in 1835 the squatters on unoffered land arrived at an "understanding" equivalent "to a law of the land," that they would "sustain each other against the speculator, no settler should bid on anothers land. If a speculator should bid on a settler's farm, he was knocked down & dragged out of the office, & if the striker was prosecuted & fined, the settlers paid the expense by common consent among themselves. But before a fine could be assessed, the case must come before a jury" which would find the accused not guilty on grounds of self-defense. "And if these means could not protect the settler, the last resort would be to 'burn powder in their faces.' " Since only the township lines had been run, the settlers had to determine their own boundaries, which were temporarily described by metes and bounds. Members of the associations pledged themselves to reconvey such parts of the quarter-section they acquired as had been improved by and were claimed by adjacent settlers and they were in turn assured that their own improvements, if on another's land, would be conveyed to them. Because of the scarcity of timber in a region primarily prairie, settlers would be allowed to claim no more than 40 acres of woodland. The amount of prairie they could claim varied, running to 320 acres and even 480 acres. It was of the settlers' groups in the Chicago land district that Commissioner Ethan A. Brown said in

[27] Letters from Commissioner of the General Land Office to Secretary of the Treasury, 1833–34.

[28] Ninian W. Edwards, *History of Illinois from 1778 to 1833; and Life and Times of Ninian Edwards* (Springfield, Ill., 1870), p. 297.

1836 that they pretended to have preemption rights and "resorted to intimidation by threats and actual violence. . . ."[29]

In Lake County, Indiana, a full-fledged settlers or claims association existed, as is revealed by the constitution of the Squatters' Union, adopted on July 4, 1836. A register was appointed to record all claims and transfers of titles, for many claimants established rights to land for sale rather than for development. Three-man boards of arbitrators were created to adjudicate overlapping claims or other disputes between members, and bidders were elected to represent each township at the approaching sale. All members were required to attend the auction sale and plans were laid for dealing with claim jumpers. Since no settler had a legal title before the auction, and in fact, none had any right under Federal law to be on the land before 1841, the recorder was to register claims which might be described by metes and bounds if the lands had not been surveyed. After the surveys were made and the sale conducted, he was also to register the many minor conveyances made to reconcile the rectangular division of the land with the practical farm divisions based on natural geographic factors. That one of the organizers and one of the three arbitrators of the union was a speculator of substantial means who had bought 11,039 acres in Lake County the previous year seems not to have bothered the members for he was a resident and was developing a part of his land.[30]

By the opening of the auction settlers had to have the cash to buy their land. Many of them had devoted all their resources to making improvements and consequently had to borrow the necessary funds from local moneylenders. The latter were estopped by the claims association from buying the improved land of squatters for speculation but could do as well, if not better, by lending squatters the money to buy their claims at "twenty, thirty and more percent." However, the Panic of 1837 rendered it difficult for the borrowers to pay these excessive interest rates and, as the local historian of Lake County says, after all the time and labor given to the organization of their claims club to save their land from outsiders "considerable tracts of . . . land came into the hands of nonresidents."[31]

The preamble of the Pike River, Wisconsin, Claimants' Union adopted on February 13, 1836, is instructive for its rationale for the union, its evasion of the Act of 1830, its contempt for speculators and its self-pity. The settlers had moved upon the land before it was surveyed and had all the usual troubles about boundaries and squaring their tracts with the survey lines. Almost from the first appearance of settlers there was trouble about tomahawk or settlers' claims, obviously pointing to the need for collective action before struggles over claims reached serious proportions. The pioneers were from Oswego County, New York. They had met together in 1834 to plan for emigration to the West and on March 9, 1835, had organized themselves as the Western Emigration Company, and had selected agents to precede them and to select land for them. It was not difficult then for those who had come from Oswego County to meet with others, mostly from New York, to form a claimants' union.

> Whereas, a union and cooperation of all the inhabitants will be indispensably necessary, in case the pre-emption law should not pass, for the securing and protecting of our claims: And

[29] Alfred Brunson, "A Methodist Circuit Rider's Horseback Tour from Pennsylvania to Wisconsin, 1835," *Collections of the State Historical Society of Wisconsin*, XV (Madison, Wis., 1900), 277; *Iowa Territorial Gazette and Burlington Advertiser*, Jan. 5, 1839; *H. Ex. Doc.*, 24th Cong., 1st sess., April 14, 1836, Vol. V, No. 211 (Serial No. 290), p. 3. Brunson says that an association in northern Illinois surveyed the section lines, set off section 16 for schools and protected the timber on it from theft.

[30] For the constitution of the Squatters' Union in Lake County, adopted on July 4, 1836, see Herbert A. Kellar, *Solon Robinson Pioneer and Agriculturist* (2 vols., Indianapolis, 1936), I, 68 ff.

[31] T. H. Ball, *Lake County Indiana from 1834 to 1872* (Chicago, 1873), p. 65.

whereas, we duly appreciate the benefit which may result from such an association, not only in regulating the manner of making and sustaining claims, and settling differences in regard to them, but in securing the same to the holders thereof against speculators at the land sale; and being well aware that consequences the most dangerous to the interests of settlers will follow, if such a union be not formed; and as Government has heretofore encouraged emigration by granting pre-emption to actual settlers, we are assured that our settling and cultivating the public lands is in accordance with the best wishes of Government; and knowing that in some instances our neighbors have been dealt with in an unfeeling manner, driven from their homes, their property destroyed, their persons attacked, and their lives jeoparded [sic], to satisfy the malignant disposition of unprincipled and avaricious men: and looking upon such proceedings as unjust, calculated to produce anarchy, confusion and the like among us, destroy our fair prospects, subvert the good order of society, and render our homes the habitation of terror and distrust—those homes, to obtain which we have left our friends, deprived ourselves of the many blessings and privileges of society, have born the expenses, and encountered the hardships of a perilous journey, advancing into a space beyond the bounds of civilization, and having the many difficulties and obstructions of a state of nature to overcome, and on the peaceable possession of which our all is depending: We, therefore, as well meaning inhabitants, having in view the promotion of the interest of our settlement and knowing the many advantages derived from unity of feelings and action, do come forward this day, and solemnly pledge ourselves to render each other our mutual assistance, in the protection of our just rights, and in furtherance of these views, we adopt and agree to abide by and support, the following Constitution.[32]

In the preamble of the Milwaukee Union, speculators were urged "to remember the mournful feelings of the emigrant, sobbing adieu to the tombs and temples of his fathers —his toils and sufferings in building up a new habitation. . . ."

By 1839 claims associations had made for themselves a respected place in western development: they were recognized by land officers, moneylenders, speculators, and potential claim jumpers. Best known of all the claims clubs was that of Johnson County, Iowa, created on March 9, 1839. The fees of the officers and the duties of the judges or adjustors of claims were spelled out, methods of staking out claims were prescribed, a maximum of 480 acres was established as the acreage settlers could hold, and the amount of improvements persons must make to have their claims qualify for protection was stated.[33]

Occupancy rights to claims were often conveyed and the relinquishment or conveyance copied on the books of the recorder of the claims association. In a fluid society such as existed in eastern Iowa during the years 1837 to 1857, with immigrants pressing in and creating a demand for land that sent prices upward, the earliest pioneers were led by the rising value of their improvements to sell and to move on to other frontiers. The traffic in such conveyances was heavy, giving rise to a demand for the protection which the claim associations provided. To give legal standing to such conveyances before actual title to the land had been given by the United States, territories and states made them—whether written or oral—as valid and binding as if the grantor had had a fee simple title. Indiana's statute was adopted in 1834, Wisconsin's in 1836, Illinois' in 1839 and 1845, and Iowa's in 1839.[34]

Early settlers took up the better located tracts with reference to supplies of timber, rivers, roads, and markets. They also avoided

[32] State Historical Society of Wisconsin, *Collections*, II (1855) 472–73, and III (1856) 370–86; *Ibid.*, 475.

[33] Benjamin F. Shambaugh found not only the constitution but also the manuscript minutes of this association, together with the recorded claims and the quitclaim deeds of the members, which are published in *Constitution and Records of the Claim Association of Johnson County, Iowa* (Iowa City, Iowa, 1894), pp. 196 ff.

[34] Henry Tatter, "The Preferential Treatment of the Actual Settler in the Primary Disposition of the Vacant Lands in the United States" (Ph.D. dissertation, Northwestern University, 1932), pp. 455 ff. Tatter also has a useful treatment of the rights of squatters prior to the General Preemption Act of 1841.

rough, broken, swampy or poorly drained land, and naturally tried to secure productive soil and to choose areas to which emigration was actively flowing. Nor did they overlook the chances of selling land once they had improved it. Many, perhaps most, settlers wished to speculate a bit on the side and it was generally said that every man had his price for his land, regardless of the months or years he had lived on it. Pioneers might claim two or three quarter-sections, holding them until they could sell a relinquishment to others. This practice tended to scatter settlement and to retard the introduction of social facilities and the making of roads. But claim making was a major occupation on the frontier and one that paid off for some people.

The career of the claims clubs did not end with the adoption of prospective preemption in 1841. It was still necessary to prevent claim jumping, to record claims and conveyances before the sale, to provide for deeding portions of 160-acre tracts improved by a neighboring settler, to act for settlers at the auction, to protect buyers of town lots, and settlers on Indian trust lands on which preemption was not permitted. They continued to flourish throughout the 1850's and perhaps were never more prevalent than in Kansas and Nebraska, during the turmoil of the Kansas Conflict.

That the clubs were rarely organizations only of squatters single-mindedly planning to create farms for themselves needs no emphasis. On the frontier where land was abundant and available for purchase at $1.25 an acre, almost everyone thought that values were certain to rise and wanted to share in that rise for which their labors were partly responsible. A man with little capital might expect to devote the better part of a lifetime to bringing a farm to full production and to acquiring all the amenities rural life could provide; yet most settlers, indeed most farmers throughout the country, tried to gain or retain ownership of more land than they could use. The universal complaint of agricultural editors, European travellers, and authorities on rural life was that people had more land than they had capital to use well, and that a 40- or an 80-acre tract in Ohio or Missouri, if intensively used, might bring better returns than 160 or 240 acres, cultivated extensively.[35]

In those localities where the auction was held before settlers had spread over the area, large acreages would not be entered at the sale and would be open to private entry thereafter. Under such circumstances the speculator could take his time in looking over the land and make such entries as appeared most promising at the minimum price. The West had for all intents and purposes frustrated the will of Congress by preventing competition at the auction and discouraging it thereafter, just as it had also long since broken down and made unenforceable the legislation against intrusions on the public domain.

Early Land Sales in Iowa

The first land sales in Iowa in 1838 and 1839 attracted huge crowds composed largely of an estimated 20,000 squatters anxiously waiting to acquire their land, and of capitalists eager to invest either in land or in loans to settlers. We may follow the Burlington sale in some detail for it illustrates the procedure followed at public sales for the next generation.

The usual claims clubs sprang up when the sale was announced. By 1841, at least 18 had been organized, ordinarily one in each township.[36] It was not difficult for the township

[35] For analysis of Iowa Clubs see Allan G. Bogue, "The Iowa Claim Clubs: Symbol and Substance," *Mississippi Valley Historical Review* XLV (September 1958), 231 ff.

[36] The *Iowa Territorial Gazette and Burlington Advertiser, 1838–1839*, the *Davenport Iowa Sun* of 1838–1840 and the *Iowa News, 1838–1840*, provide notices of the meetings of the clubs and of some of their activities. Most of the clubs thus noticed were in the Burlington district whose newspaper gave more attention to them than did the papers of the other cities. For this reason there is a strong likelihood of many more clubs in townships farther north.

clubs to cooperate by acting together at the sale and in fact most accounts speak of them as working as a unit when the auction began. Despite the self-assurance of the clubs, the presence of numerous capitalists anxious to invest in land worried the settlers who were afraid that their claims clubs might not be able to protect them, especially as many squatters lacked the money with which to buy their claims. One youth, whose cabin had been frequented by persons looking for land, refers to the presence in Burlington of a small group of men who did not wear plain clothes nor have the rough manners of the pioneers, but a "smooth manner and a ruffled shirt . . . , and a bit of jewelry, marking them as speculators." The speculators were denied information respecting lands occupied by settlers and in turn they reminded the people that anyone could purchase the lands and that the purchaser would have the right of possession, thereby increasing the uneasiness and excitement at the sale. Another participant at the auction said that "the hotels were full of speculators of all kinds from the money loaner, who would accommodate the settler at fifty per cent . . . and a worse class of money sharks . . . who wanted to rob the settlers of their lands and improvements . . . holding that the settler was a squatter and trespasser, and should be driven from his lands."[37]

Before beginning the auction, General Ver Planck Van Antwerp and John C. Breckenridge, receiver and register of the Burlington land office, read the Act of Congress of March 31, 1830 "for the relief of the purchasers of public lands and for the suppression of fraudulent practices at the public sales" with its threat of severe punishment for anyone combining with others to intimidate or prevent competitive bidding and with its proscription of contracts between moneylenders and settlers for the purchase and subsequent resales of the land at a higher price and at frontier interest rates. A contemporary later said that when these two clauses were read "a silent smile on the settlers' faces spoke their contempt" for measures they proposed to nullify completely by the massed power of their claims club and the authority it had come to have at public land auctions.[38]

Preceding the public offering, some 110 settlers who had established themselves on land early enough to qualify under the Preemption Acts of 1824, 1834, and 1838 acquired their claims at the government minimum price. As soon as sales began it was seen that the club was in complete command and able to prevent competitive bidding on all tracts registered with it. With the bidder for the association standing by the auctioneer, all tracts for which the claimants could pay were knocked down at the minimum price of $1.25 an acre. There was some competition for 11 tracts not claimed by settlers which ran prices up to a high of $2.86 per acre.[39]

Claims associations as such were not opposed to investment in public lands by absentee or nonresident capitalists and they raised no objections to large purchases even though public opinion in the West was not favorable to them. Their primary objectives were to protect the settler who had made improvements from competition at the auction and to provide an organization to record the boundaries, conveyances, and mortgages of claims. If settlers were not able to raise the money to buy their 80- or 160-acre tract, the

[37] Charles R. Tuttle, *An Illustrated History of the State of Iowa* (Chicago, 1876), pp. 102–103.

[38] A major difficulty with Section 5 of this act was that it declared null and void all contracts providing for the entering of the land by a moneylender who would then resell to the settler at a higher price, thereby making it almost impossible for the settler to recover his land from the usurious dealer unless he could in one way or another invoke the state usury law in the state or territorial courts. 4 Stat. 392.

[39] George C. Duffield, "An Iowa Settler's Homestead," *Annals of Iowa*, Third Series, VI (October 1903), 213. The data concerning land entries is taken from the abstract of land entries in the Burlington and Dubuque land office, National Archives.

claims association ordinarily could give them no further protection.

At every land sale, capitalists or agents of capitalists were present, ready and anxious to lend their money which they could not use for land speculation because of the influence of the association. If a settler's claim was well located, or had some improvements on it, or the demand for land was such that it was worth more than the $1.25 an acre, he could readily borrow from the moneylenders. Commonly the lender would enter the land in his own name at the minimum price ($200 for 160 acres) and resell to the settler for $230 or $240 plus interest and give a bond for a deed, pledging to convey the title at the end of a year if fully paid. In some instances the lender took title and conveyed one-half the land to the settler. Neither the lenders nor the settlers seemed to fear that the anti-collusion section of the Act of 1830 would or could be invoked against their joint agreement.[40]

Richard F. Barrett, a director of the State Bank of Illinois, and active in town development, wild land speculation, and transportation improvements, made extensive loans at the Burlington and Dubuque sales in Iowa and at the Quincy, Vandalia, Springfield, and Galena sales in Illinois. Well in advance of the sales he announced that he would be in attendance with ample means to buy any land which he was requested to purchase by settlers and that he would resell to them at a "reasonable advance on credit of from one to five years."[41] With $100,000 provided by the State Bank of Illinois he entered in his own name 72,184 acres in these six land offices. At the Burlington sale he entered 44 quarter-sections, 90 half-quarters, and 10 irregular tracts ranging from 6 to 456 acres. For a quarter-section for which he paid $200, Barrett required payment in five annual installments of $90 each which in true interest is close to 35 percent. Squatters seemed only too glad to take advantage of Barrett's loans at the time, but when it came time to make payments they resented his charges and accused him of being a usurer. In 1842, a Burlington land agent advertised the lands of Richard F. Barrett for sale, for which the paper of the State Bank of Illinois would be accepted, indicating that some of the settlers had not been able to complete their payments to him and had forfeited such sums as they had paid.[42]

A Burlington paper bitterly inveighed against Barrett and other moneylenders and the ineffective usury laws:[43]

> But what is the language of our usury laws? They say in effect to the capitalists and the speculators, 'Come to the land sales in Iowa—come with your pockets lined with cash but lend it not to our settlers to relieve their necessities. Furnish them with money at high prices, but take the titles of the land yourselves. Affix such conditions to its redemption as very probably they may not be able to fullfil, and when they fail to comply therewith, turn them pennyless adrift, and grasp the fruits of their toil forever. We will stand by you and aid you in this business. We will prevent the settler from obtaining money elsewhere, by prohibiting any one to loan except at a rate which he cannot afford.'

Another Iowa paper urged the hard pressed settlers in 1839 to use the procedure authorized in Section 5 of the Act of March 31, 1830, to have the titles of Barrett and other lenders set aside but did not show them how they

[40] The *Iowa Territorial Gazette and Burlington Advertiser*, Dec. 22, 1838, reported that the territorial assembly had passed a bill on the 12th of that month making the legal rate of interest 6 percent, but in cases of special agreement any amount up to 20 percent was allowed.

[41] *Iowa Territorial Gazette and Burlington Advertiser*, Sept. 15, 1838; *Iowa News*, Sept. 29, 1838. E. S. and J. Wadsworth & Co., bankers of Chicago, advertised similarly in the *Milwaukee Advertiser*, Dec. 22, 1838, that a representative was travelling through the Territory of Wisconsin, contracting with settlers to enter their lands at the approaching sales.

[42] *Burlington Hawkeye and Iowa Patriot*, March 10, 1842.

[43] *Iowa Territorial Gazette and Burlington Advertiser*, Nov. 21, 1838.

could raise the money, now much tighter than in 1838, for the purchase of the land.[44] Henry Shephard brought a bill in chancery to set aside a speculator's sale because it was in violation of the act, but how many other settlers took this course can only be determined by a detailed examination of the court records.[45]

Other moneylenders present at the Burlington sale were Lewis Benedict of Albany, New York, who bought for settlers 39 quarter-sections, 80 half-quarters and 9 irregular tracts; Lyne Starling of Franklin County, Ohio, whose total purchases at Burlington and Dubuque were 22,134 acres in addition to 4,091 acres bought at LaPorte, Indiana; Lawrason Riggs of the Washington and Philadelphia banking family of Elisha and Romulus Riggs; and Arnold Naudain, Edward Tatnall, and Merritt Canby of Delaware. All these individuals or groups entered much land in other offices. A considerable portion of Starling's land was never conveyed to the original squatters who had contracted with him for its purchase; 3,762 acres were still held by him in 1853 and another part had been sold by then for $38,000.[46] Lewis Benedict's entries for settlers at Burlington came to 20,369 acres in 1838 and 1839. His annual interest terms, made possible by reselling the land at $1.50 to $2.00 an acre plus the maximum interest the usury laws permitted, were 50 percent for 2 years, 40 percent for 3 years, 30 percent for 4 years, 25 percent for 5 years. Benedict would enter the land for settlers who had 40 to 80 acres in cultivation on quarter-section tracts; recent arrivals with claims but slightly improved were not such good risks. An observer of Benedict's business operations declared that no charge of unlawful interest or usury could be brought against him because he entered the land in his own name. Twenty percent interest was lawful when a contract was made but if the rate was not mentioned in the contract only 6 percent could be charged.[47]

Of the 1,140,000 acres sold in the Dubuque and Burlington offices in 1838 to 1840, roughly 9 percent was acquired by individuals or groups in amounts exceeding 1,000 acres. Most of these large entries we may assume were made for settlers, many of whom were not able to pay their high interest obligation and lost their claims.

What occurred at Burlington was characteristic of the public land sales. In the Chicago land office, for example, William B. Ogden, who was later to be mayor of Chicago and president of the Chicago and Northwestern Railroad, was able to negotiate loans to settlers on terms that were even more onerous than those of Barrett. The title was patented to him, and the settlers agreed to pay $465 over the course of 4 years for the $200 he paid for each quarter-section. Apparently this was more than some of his competitors were asking, so he lowered his charges to a total of $440 over 4 years. There was no usury in such charges, Ogden declared, since the settlers never had a legal claim to the land and he had a perfect right to sell it after he had made the entry for whatever price was agreed upon. Ogden as-

[44] *Iowa News*, quoted in the *Davenport Iowa Sun*, Sept. 11, 1839. Section 5 declared that any agreement by persons to enter land for settlers at the public sale was illegal and all persons involved in such agreements were subject to heavy punishment. 4 Stat. 392.

[45] Shepherd brought a bill in chancery in the district court at Burlington in September 1840, stating that in November 1838, he was in possession of certain lands of the United States on which he was entitled to preemption of 160 acres, that a special contract was made with Lewis Benedict by which he was to purchase the land and resell it to Shepherd at a greater price. The bill prayed for a conveyance of the land upon payment of the consideration and interest, and also for general relief. Benedict was ordered by the court to plead or demur to the bill. *Iowa Territorial Gazette and Burlington Advertiser*, Jan. 9, 1841.

[46] Courtesy of Andrew D. Rodgers, March 31, 1966.

[47] D. W. Kilbourne, Montrose, Aug. 24, 1839, to Samuel Marsh, Kilbourne MSS., Iowa State Department of History, Des Moines.

sured one eastern investor that the large advance over cost gave no offence to the purchaser "for he seeks you out knowing your rates." On such terms Ogden lent money for capitalists from Maine, Massachusetts, Connecticut, New York, and Maryland—$15,000 in 1839 alone.[48]

Skulduggery, Intimidation, and Collusion

In protecting settlers from the competition of speculators the claims clubs flouted Federal law, the territories and states adopted measures that facilitated their work, and western members of Congress used their influence in behalf of settlers and against the Government. For example, the constituents of Lucius Lyon, Senator from Michigan, were demanding the right of preemption on a tract of the Swann Creek Chippewa Indians that had been ceded to the United States and ordered sold. In reply to the letter of protest against the sale of the land at auction, Lyon said that the treaty required sale at auction but urged the settlers "to prevent any bidding against them, so that each occupant may purchase the land he lives on."[49] Years later, Henry Rice, Representative from Minnesota, came close to advocating vigilantism to prevent public sales. Immigrants to Minnesota who had recently taken up land and begun their improvements were facing public sales in 1858 and 1859. They had either to raise the funds for the purchase of their claims at the sale or to stand the loss of all the work they had devoted to them. Unable to pay the preemption price and not desiring to borrow from the loan sharks whose rates would soon eat up their equity in the land, they pleaded for postponement. Rice outlined a method by which they might protect their claims, which went a step farther than previous actions. He said that he could not believe "there is a man within our State, so debased as to bid upon land improved by another; but should such a man be found at any of the sales, I would unhesitatingly recommend that he be invited by the crowd to leave." He advised all persons unable to pay for their claims to attend the sale "and see that no one bids upon the same" and at the conclusion of the sale to file a second declaratory statement under the preemption law which would give them one additional year in which to pay for their homes.[50]

Ethan A. Brown, Jackson's Commissioner of the General Land Office in 1836, was no friend of preemption or of organized efforts to prevent competitive bidding at the public land sales. In a report to Congress on frauds in the public land system he wrote of the "system of terror that threatens the competitor for the purchase of public land with the vengeance of the settler with whose usurpation he may interfere. In some quarters this state of things is become formidable." He was aware that there were two kinds of combinations, one consisting of capitalists seeking large tracts, who had dominated sales at a number of Alabama offices, and the other made up of numerous settlers anxious to keep out all competition for claims they had established. He cited the sale at Chicago in June 1835 as illustrative of the latter type. All such combinations he blamed on the preemption laws "whose repeated enactment may have led the settlers to the erroneous persuasion, that they have acquired rights not given by law."[51]

[48] Letters of W. B. Ogden to Obadiah Sands, Sept. 27, 1839; to Joseph E. Sheffield, Oct. 17, 1839; and to John D. Ledyard, Oct. 15, 1839, in Ogden Letter Book, 1839–1840, Ogden MSS., Chicago Historical Society.

[49] Lyon to Charles W. Whipple, Jan. 18, 1839, "Letters of Lucious Lyon," *Michigan Historical Collections*, XXVII (1897), 515.

[50] The letter of Rice of Oct. 13, 1860, to the editors of the *Pioneer and Democrat* was published in the *Stillwater Democrat*, Oct. 20, 1860. Lyon's and Rice's advice about nullifying Federal law was little different from the encouragement Congressman John Wentworth and other Illinois, Michigan, and Wisconsin members of Congress gave to lumbermen in their efforts to render ineffective laws against timber stealing on the public domain.

[51] *H. Ex. Doc.*, 24th Cong., 1st sess., April 14, 1836, Vol. V, No. 211 (Serial No. 290), pp. 3, 8.

On a number of occasions Congress considered the problems of intrusions on the public lands and combinations to prevent competition at the sales but to no particular result. The Act of March 3, 1807 "to prevent settlements being made on public lands before their sale" had accomplished little, as is evidenced by the continued stream of memorials and petitions asking that settlers be granted preemption rights and by the adoption of 24 special preemption acts before 1820 and 15 between 1820 and 1837, including two of a general character. All these acts were framed to forgive settlers who, in violation of the law including the Act of 1807, had moved upon public lands before they purchased them.[52] The Act of March 31, 1830, with its odd combination of extension of further credit to debtors on public lands and severe penalties for persons combining to prevent competition at public sales, accomplished little in preventing organizations of settlers from controlling the sales at public auctions.

Existence of Combinations "Rumored Abroad"

Twice in 1838 the House of Representatives, at the request of members from Vermont and Virginia, asked the Commissioner of the General Land Office to submit all information available on intruders on the public lands and on efforts to suppress competition and called for a plan to secure the public against loss from illegal entries, frauds, and violations of the land laws.[53] It was late for Congress to grapple with evasions of the law that had been so extensively practiced, tolerated by Federal officials in the West, and supported by state and territorial legislation.

James Whitcomb, Commissioner, must not have been happy with requests, for the most notorious speculators' combinations had existed in Mississippi and Alabama and had involved powerful political leaders, including Robert J. Walker, then in the Senate. They had occurred at land offices crowded with people anxious to purchase land they had already selected; the registers and receivers, whether or not they were participants in or beneficiaries of the combinations, were so overwhelmed with business that they could do little or nothing to prevent the collusion and intimidation. Furthermore, it was well known that district attorneys did not like to take action in such cases where influential men were involved. Whitcomb reported that the existence of combinations "had frequently been rumored abroad, and the public prints have adverted to their existence." However, on October 24, 1838, he instructed all local officers "immediately on the receipt hereof" to send any information within their knowledge as called for in the resolution.

Almost without exception the officers denied direct knowledge of efforts to suppress competition, although they admitted they had "heard of" such practices. It should be said the reports were chiefly from offices where the lands had long since been offered at public sale. Busy officers did not reply. But having absolved themselves of all responsibility for evasions of the Act of 1830, the officers gave some information that bears on the problem. The Indianapolis register denied the existence of combinations in his district. He had, however, heard of combinations in the Fort Wayne and LaPorte districts that threatened violence and actually resorted to it, to prevent nonmembers from purchasing large quantities of land and then forfeiting it at the end of the day, repeating the same tactic day after day until the sale was over and the land could be entered at the base price of $1.25 an acre. The only way to prevent such actions, the register stated, was to have an armed force at the auction or to conduct the sale at some larger center,

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[52] Report of James Whitcomb, Commissioner of the General Land Office, April 4, 1838, in *H. Ex. Doc.*, 25th Cong., 2d sess., Vol. IX, No. 303 (Serial No. 329), p. 2.

[53] *House Journal*, 25th Cong., 2d sess. (Serial No. 320), pp. 643, 689, 1275; *H. Ex. Doc.*, 25th Cong., 2d sess., Vol. IX, No. 303 (Serial No. 329), p. 3.

presumably Indianapolis. The Palestine, Illinois, receiver reported squatters saying "it would be unsafe for any person to buy their improvements. . . ." He had advised them "to be quiet, as they themselves were *intruders*; and if they made any objection to the purchase of the land by others, they would be proceeded against by the United States; which, I believe, has silenced all to whom I thought it necessary to make the remark."

The Chicago officers asserted that "no attempts or practices have been made in this land-office district to prevent purchases or entries" and then added that they understood settlers had pledged themselves "not to bid against each other." Making sure that they revealed nothing, and begging the questioning, they declared: "We have not heard of any combination among the settlers to resist the right of any citizen to bid for any land at the public sale not actually settled upon, or occupied by a family, nor under any other circumstances whatever." The Danville, Illinois, officers, having denied all knowledge that might be useful to Congress, reported that there had been some excitement at the sales but that they had no difficulty in preserving order and allowing all who wished to present their bids. At Palmyra, Missouri, officers denied the existence of intimidation or collusion in their district, though some men had bid up land on successive days to keep others from getting their tracts and had then forfeited it, hoping at the conclusion of the sale to get their desired land at the $1.25 price. They had heard of extensive combinations in Iowa and Wisconsin, so systematic that each township had its own settlers' organization and its own bidder, all prepared to take swift action against any nonmember bidding on their land. Officers in both Milwaukee and Mineral Point, Wisconsin, denied personal knowledge of illegal combinations, though the Milwaukee receiver did send a newspaper copy of the proceedings of a settlers' meeting.

J. W. Worthington, register of the Dubuque land office, offered the only frank statement of efforts at intimidation and collusion. Well before the exciting sales of 1838 he had been aware of the settlers' meetings, their resolves to prevent any outsider from bidding on their claims, and the punishment they threatened to anyone upsetting their plans. All this was widely known in the community "and it is thought all right in this country, and is called *the law of necessity*. Whenever a tract of land was offered, it was only necessary to say 'settlers,' and it was struck off at the minimum price per acre." He also declared that speculators to whom the settlers were favorably disposed were permitted to purchase at the minimum price land that should have sold for a much higher figure. Ver Planck Van Antwerp, the receiver at the Burlington office, was equally frank about the control over sales exercised by the organized settlers.

Only one reply had come from Mississippi and Alabama, from the receiver of the Montgomery office. "No undue attempts or practices to keep down the price of the public lands, or to prevent purchases or entries thereof by force, threats, or fraud had been made." It has been the common practice in this region, "during the land sales, to form a company for the purpose of speculation; but I never heard it suggested that they did any thing to deter any person from bidding."

Stories of gross fraud in the management and sale of Creek and Chickasaw allotments had earlier reached Washington but no person of standing could be found to investigate them and, as Whitcomb adds, "if they had made the attempt, no satisfactory result would have been realized. . . ."[54]

Striking at Speculation

Possibly the knowledge that settlers' organizations had effectively ended competition, so far as improved claims on the public domain were concerned, so weakened the

[54] *H. Ex. Doc.*, 25th Cong., 3d sess., "Combinations–Public Lands," March 3, 1839, Vol. VI, No. 241 (Serial No. 349), pp. 1–12.

arguments against preemption that its opponents were ready to throw in the sponge. For years sales prices had come to average but slightly more than $1.25 an acre. Certain it is, that the aims of general prospective preemption had already been achieved before 1841 by settler action.

The West had still other ways of striking at speculation in public lands. It felt that the 5 year's exemption from taxes which purchasers of public land enjoyed was an especial boon to absentee owners who contributed nothing to the development of the community during that period, while local property owners were building roads, making improvements on their own land, and taking their part in church and other community enterprises. The tax restriction did not apply to public land in states admitted into the Union after 1820, but it was a major source of complaint in Ohio, Indiana, and Illinois. Finally on January 26, 1847, Congress ended this 5-year exemption feature, which had been retained 27 years after the reason for its existence was ended by the cessation of credit sales in 1820.[55]

In Illinois there had been a special reason for complaints. Lands in the military tracts were allowed only 3 years of exemption if retained by the warrantee and lost this exemption as soon as they were sold by him. There being little improved land in the state in 1819, and indeed little land in private ownership save the military bounty lands, the cost of the state government was largely placed on them in the form of a state land tax. Resident owners of military bounty lands, resenting the exemption from taxation which purchasers of other land enjoyed for 5 years, made the tax due dates fall so soon after the notices of assessment as to prevent remote absentees from getting their taxes in on time. A high rate of tax delinquency and tax titles followed.

On January 2, 1837, in the midst of the great speculative boom of the thirties when millions of acres were being acquired by men of capital, Robert J. Walker, Chairman of the Senate Committee on Public Lands and himself no mean speculator, reported a bill "To arrest monopolies in the public lands, and to prohibit the sales thereof, except to actual settlers in limited quantities." Westerners loved the word monopoly which meant to them anything that was both big and bad. The Second Bank of the United States was a monopoly to them, as were absentee speculators in land, and later the grain elevators, the stockyards, and the railroads. The measure was taken up just at the time when much support for distribution had developed in the East. Party lines in the Senate were close; some Democrats were inclined to wander off the reservation on land and distribution questions, and there seemed strong doubt that the measure would get through. It was amended to limit its application and rid it of a graduation clause and additional preemption privileges. Walker deemed the bill now too weak and innocuous to merit passage and had it referred back to the Public Lands Committee which had a 3–2 majority of Senators from the public lands states. Two days later it re-emerged, with a section making actual occupation and cultivation essential for the purchase of land.

Most bitter of the bill's opponents was John P. King of Georgia who declared that it would establish "a system of plunder, and perfidy; a system in which those who had the least merit would make the most profitable speculations," and that it was designed to benefit only squatters, for whom he had no sympathy, and speculators. Walker, who knew the ways of the speculators and the harm they did in a region, declared with some hyperbole that as much as 41 million acres of land had passed to speculators and that the only way to stop their accumulations was to ban further sales to them. The amended and newly reported bill passed the Senate on February 9 by a vote of 27–23 but

[55] *Senate Journal*, 29th Cong., 2d sess. (Serial No. 492), Jan. 7, 1847, p. 90; *House Journal*, 29th Cong., 2d sess. (Serial No. 496), Jan. 20, 1847, p. 192; 9 Stat. 118. Also Carlson, *The Illinois Military Tract.*

ACREAGE OF PUBLIC LAND SURVEYED, PROCLAIMED FOR SALE AND SOLD TO SEPTEMBER 30, 1837[a]

Year	Surveyed	Proclaimed	Sold
	By Year		
1787 to 1822		78,723,174	15,614,499
1823		11,414,598	653,319
1824		7,294,186	749,323
1825		3,419,604	893,461
1826		2,880,703	848,082
1827		3,314,816	926,727
1828		3,268,493	965,600
1829		6,148,962	1,244,860
1830	4,340,040	6,750,798	1,929,733
1831	4,988,160	11,005,561	2,777,856
1832	9,250,560	4,205,805	2,462,342
1833		6,614,596	3,856,227
1834		13,056,865	4,658,218
1835		13,767,268	12,564,478
1836		509,034	20,074,870
1837			4,805,462
Totals	189,686,085	172,374,470	75,025,055
	By States		
Ohio	16,555,952	16,512,110	12,373,247
Indiana	20,155,697	18,464,679	13,754,370
Illinois	24,975,656	23,991,748	9,273,256
Missouri	21,440,796	21,004,365	5,531,954
Alabama	29,856,270	29,265,055	10,088,687
Mississippi	20,791,826	20,172,482	9,235,945
Louisiana	10,530,359	6,543,393	2,010,426
Michigan	13,532,192	12,731,853	8,894,224
Arkansas	13,913,431	12,662,900	2,127,695
Florida	9,254,297	6,218,573	683,324
Wisconsin	8,679,605	4,807,307	1,051,921
Total	189,686,085	172,374,470	75,025,055

[a] *H. Ex. Doc.*, 25th Cong., 2d sess., Vol. V, No. 80, Jan. 8, 1838, p. 3 and Vol. VI, No. 136, Jan. 30, 1838, pp. 10–11. Yearly figures for the acreage surveyed are not available except for 1830–1832.

was tabled in the House by a vote of 107–91. For the next few years discussion in the Congress centered on graduation and distribution.[56]

A Waning and Waxing of Sales

Congress was reasonably responsive to groups who wanted surveys to be pushed ahead rapidly. Early pioneers, many of whom were dealing in claims in a small way, the government surveyors, and the registers and receivers of the land offices who were dependent on fees and contracts, were continually urging that larger appropriations be made and that the General Land Office hasten the award of surveying contracts. Because of these pressures surveys were made far in advance of actual needs. For example, in Michigan Territory 11,192,213 acres had been surveyed and all had been proclaimed for sale by 1833 but only 2,150,471 acres had been sold; 25,570,000 acres had been surveyed by 1834, but only 5,927,452 acres sold.

[56] *Cong. Globe*, 24th Cong., 2d sess., pp. 67, 112, 142, 145, 153, 167, 216.

LEADING STATES IN PUBLIC LAND SALES (ACRES)

	Ohio	Indiana	Illinois	Missouri	Michigan	Alabama	Mississippi	United States
1830	156,793	476,352	316,452	214,917	147,062	373,204	108,440	1,929,734
1831	335,393	654,437	339,411	296,468	320,477	661,832	160,798	2,777,857
1832	412,715	546,844	227,376	251,280	252,211	412,683	261,314	2,462,342
1833	551,154	554,682	260,241	226,286	447,780	451,320	1,121,495	3,856,228
1834	478,847	673,656	354,013	253,792	512,760	1,072,458	1,064,055	4,658,219
1835	661,436	1,586,905	2,096,629	662,180	1,817,248	1,587,008	2,931,181	12,564,479
1836	1,282,992	3,245,344	3,199,709	1,655,688	4,189,823	1,901,409	2,023,710	20,074,871
1837	470,421	1,249,818	1,012,849	663,988	773,522	381,774	271,075	5,601,103
1838	343,096	602,425	778,560	510,423	97,534	159,969	256,354	3,414,907
1839	242,445	618,748	1,132,876	1,039,066	134,984	121,936	17,787	4,976,383
1840	33,059	118,869	389,275	572,498	26,106	56,785	19,175	2,236,890

For the entire public land area 143,767,025 acres had been surveyed and proclaimed for sale by September 1834, of which 35,552,070 acres had been sold.[57]

The excitement which occurred at the Huntsville and St. Stephen's land offices in Alabama in the years 1817 to 1819, and in a somewhat lesser degree at other offices, did not recur for nearly a generation. In fact, land sales were less than a million acres a year from 1820 to 1828 and only reached 1,929,734 in 1830. In a large measure the sales of these years were made to settlers. Thereafter sales increased rapidly. New economic forces were soon to reproduce the scramble for land that had existed earlier, the difference being that in the thirties it was not only Alabama but Michigan, Indiana, Illinois, Mississippi, and Missouri as well which attracted immigrants and large amounts of capital. This second period of inflation and investment in wild lands was the result of the great expansion of state bank issues and the numerous internal improvement schemes undertaken by the states which were drawing in large amounts of foreign capital; the beginnings of railroad construction in the East; growing immigration, which reached a high point in 1837 when 79,340 people reached American shores; and the forward movement of industry. Not to be disregarded in this enumeration are the favorable agricultural prices which reached their peak in 1836. Cotton then brought 13.1 cents a pound, tobacco 7.1 cents, sugar 8.6 cents, and wheat $1.63 a bushel.[58]

By the thirties America was producing an increasing amount of capital, which was being invested to a considerable extent in western land, while at the same time it was importing many millions in capital from abroad. In the thirties occurred the first big thrust of outside capital in western land investments.

There were few opportunities for investing in stocks and bonds of corporations at that time, whereas facilities for acquiring western lands were available to almost everyone. In most of the larger cities there were agencies advertising that they would buy land for others, pay taxes on it, safeguard it from intrusions or pilfering, and sell it when the time was ripe. Ralph Osborn and Demas Adams, for example, announced in the *National Intelligencer* of May 16, 1833, that they had opened a land office in Columbus, Ohio

[57] Dallas L. Jones, "The Survey and Sale of the Public Lands in Michigan, 1815–1862" (Master's thesis, Cornell University, 1952), pp. 17–19; Young, *Redskins, Ruffleshirts and Rednecks*, p. 175; *American State Papers, Public Lands*, VII, 530.

[58] Lewis C. Gray, *History of Agriculture in the Southern United States to 1860* (2 vols., Washington, 1933), II, 1027 ff.; George R. Taylor, *The Transportation Revolution, 1815–1860* (New York, 1951), *passim*.

for the purpose of acting as agents for eastern capitalists in investing funds in the public lands, paying taxes, redeeming tax delinquent lands and managing property for absentees. Three years later Demas Adams bought 30,992 acres in the Lima district, possibly for eastern investors. Robert T. Cook advertised in the *Richmond Enquirer* of September 6, 1836, that, having examined and purchased several thousand acres in Louisiana, Mississippi, and Arkansas and knowing the country well, he was prepared to purchase lands on commission or for a portion of the net profits when sold. This latter practice became very common. Investors put up the money, including the fees, for the purchase of land and the western agent made the selections and entries and agreed to manage the lands for a third or a quarter of the profits. Many such advertisements offering to represent capitalists in land speculation enabled people of even small means to invest without making the difficult trip west to look over the lands. The stories of great opportunities and high returns makes understandable the westward flow of capital in large quantities.[59]

Although all parts of the West were attracting settlers and investors, the states in which land was in greatest demand during the thirties were Michigan, Illinois, Indiana, and Mississippi, and the most active land offices were Kalamazoo (southwestern Michigan), Fort Wayne (northwestern Indiana just south of the Kalamazoo district), Detroit (southeastern Michigan), and Palmyra (northeastern Missouri). In all these districts local residents constituted much the larger number of buyers and their purchases comprised the larger part of the total sales. Examination of the abstracts of cash entries for the various land offices north of the Ohio shows clearly that the bulk of the land was passing into the hands of purchasers of 80 or, more commonly, 160 acres. If they borrowed money to make their entries but took title in their own names, the General Land Office records do not show this fact, but if the title was taken in the name of the lender of the funds, as was commonly done at the Iowa sales in 1838 and 1839, that information was recorded.

Moneylenders and speculators from Ohio, New York, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, South Carolina, and even Alabama were present at all the land sales. In Indiana, for example, there were more than a hundred individuals or partners who attended one or more of the public sales, buying from 1,000 acres to 10,000 and 15,000 acres. Their total purchases came to 236,000 acres in the boom days just before the Panic of 1837. Among the larger buyers of Indiana land was a Delaware trio, chief of whom was Arnold Naudain, United States Senator, whose purchases at the Crawfordsville and Indianapolis land offices came to 11,000 acres. Levi Beardsley, lawyer, writer, and speculator has described in his reminiscences how people were carried off their feet by the opportunity of speculating in wild land in the West. In company with a partner, James O. Morse, Beardsley set out from Otsego County, New York, in 1835 to invest in public lands in the West. "In that memorable year," he wrote "every one was imbued with a reckless spirit for speculation. The mania, for such it undoubtedly was, did not confine itself to one particular class, but extended to all. Even the reverend clergy doffed their sacerdotals, and eagerly entered into competition with mammon's votaries, for the acquisition of this world's goods, and tested their sagacity against the shrewdness and more practiced skill of the professed sharper." Travelling by boat from Toledo via Mackinac

[59] For other examples of solicitation of funds for investment in western lands, see advertisements of Daugherty, Osgood and Dabney of New York in the *Richmond Enquirer*, Oct. 7, 1836, of George Megquier of Warrenton, Va., in the *National Intelligencer*, Oct. 12, 1836, Thomas Gough and Z. Platt in the *Albany Argus*, Sept. 9 and Nov. 22, 1836. By the 1850's agents located in St. Paul, Minneapolis, Council Bluffs, St. Louis, Peoria, Detroit, Keokuk, and Dubuque were advertising in the *National Intelligencer* for capital to invest in land.

Straits to Chicago with many others bent on the same objective of buying land, he noted that they were continually inquiring prices, making bargains wherever the boat stopped, exhibiting "splendid lithographic maps" of towns and cities for lots in which extravagant prices were demanded. Beardsley and Morse had earlier bought 60,000 acres in western New York from the Holland Land Company, and the former had acquired a large tract near Columbus, Ohio, which he was renting to tenants. Their purchases near Fort Wayne and LaFayette, Indiana, came to 8,148 acres in addition to city lots in Toledo, and probably in Chicago.[60]

There was much more speculative purchasing in Michigan than in Indiana during the boom days of 1833–37. Almost 10 percent of the land purchased was acquired by speculators, very largely nonresidents. Three families who had acquired many thousands of acres of the rich soil of the Genesee Valley of New York between 1790 and 1815 and had developed it quite profitably participated in this rush to acquire western land. Charles H. and William T. Carroll and Daniel Fitzhugh had come up from Maryland and the Wadsworths had come from Connecticut. By the 1830's they were successful landed proprietors, having numerous tenants working their land and enabling them to live the life of country gentry. Whether they wanted to begin in Michigan another Genesee-type development with large estates running into thousands of acres operated by tenants is not clear, but in 1836 they entered 135,000 acres in the West, mostly in Michigan. A chronicler writing years later of the selection of 40,000 acres in Monroe County, Michigan, by the Carroll brothers, said when they arrived at the land office to make their entries, other settlers and speculators had taken the best of the land but the "reckless spirit of speculation" induced them to file on everything that was left without looking the tracts over in advance. Many of the tracts were low and wet, required drainage, and were to be a white elephant on their hands for years.[61]

A somewhat surprising fact about the speculative purchasing of the thirties and indeed of the fifties is that southerners, including some outstanding political leaders like John Slidell, Clement C. Clay, Eli Shorter and William S. Grayson were investing in northern lands. Mention may be made here of Thomas Ludwell Lee Brent, a member of a prominent Virginia family, who had been in the diplomatic service in Spain and Portugal. Upon his return to America he was induced in 1836 to journey to Michigan to invest his small fortune of $90,000 to $100,000 in land. There he bought 21,867 acres which he planned to develop. Innocent of the details of business management and of northern farming Brent struggled to keep his land, meet the taxes, and provide for his family. Eventually he lost much of the property and died prematurely, leaving his heirs one farm on which the work was being done by tenants.[62]

John M. Gordon, a member of a prominent Baltimore family of substantial means, was caught up in the excitement about rising land values in the middle thirties. He resolved to sell a part of his bank stock in 1836 and to invest the returns, perhaps as much as $20,000, in Michigan land. He had already heard much about investments by the Wadsworths and other influential families with whom he was in correspondence and was convinced that one could turn over investments in western lands quickly with large profits. On his long journey west by way of New York,

[60] Levi Beardsley, *Reminiscences; Personal and Other Incidents* (New York, 1852), pp. 252 ff.

[61] I. P. Christiancy, "Recollections of the Early History of the City and County of Monroe," *Pioneer Collections. Report of the Pioneer Society of the State of Michigan*, VI (Lansing, Mich., 1884), 368.

[62] I found the entries of Brent to be 21,687 acres but Judge Albert Miller, who had some acquaintance with the family, wrote that he purchased 70,000 acres. For Miller's recollections of Brent see Michigan Pioneer and Historical Society, *Pioneer Collections*, IX, 192–96. Also see Paul W. Gates, "Southern Investments in Northern Lands Before the Civil War," *Journal of Southern History*, V (May 1939), 169.

the Hudson, rail, canal boat, and stage coach from Albany to Buffalo, then by boat to Detroit he seemed to have heard little but stories of profits in land speculation. There was nothing in the air to encourage doubts or urge caution. After reaching Michigan he took a long overland tour of possible areas for investment before making his choice and then bought 6,764 acres, mostly in Van Buren and Berrien Counties. His detailed diary with its numerous comments on the people he met on his travels, in the inns and land offices reveals how little doubt he had about the prospect of early returns from his investment. It also shows no awareness of the hostility to absentee owners and their purchases, but then he was mostly in the company of men who were engaged in the land business orwho were providing accommodations for visiting capitalists prepared to invest and who would not reflect that hostility.[63]

Illinois, with its rich prairie soil and its location on Lake Michigan and the Mississippi, attracted speculators at an early date. It drew more outside capital than any other state and was saddled with very large speculative holdings which were to be kept more or less intact for years. This was notably true in the military tract where most of the 160-acre grants had passed from the soldiers to speculators and land companies, but it was also true of central Illinois, and, by the fifties, of the Grand Prairie of east central Illinois. In the busy middle thirties some 15 percent of the land sales in Illinois were made to speculators, moneylenders, estate builders, and colony organizers. Among the estate builders was Daniel Webster who acquired several thousand acres in the LaSalle prairie of north central Illinois and devoted a considerable amount of capital to their development. The largest of the groups investing in Illinois was headed by John Grigg, a wealthy Philadelphia publisher who with others purchased 124,000 acres near Springfield. Colony promotors, carrying on the earlier New England practice, sent out delegations to select and purchase from 5,000 to 30,000 acres to provide adequate land for all their members and an endowment for worthy enterprises such as colleges or seminaries. At least a dozen such colonies were organized in this way and hundreds of New England families with considerable property emigrated to the West. Some left as a legacy, either to an institution, or men associated with it, holdings of large blocks of land.[64]

During the first 6 years—1835–40—that Wisconsin's lands were subject to purchase, 29 percent of all the land sold was acquired either by moneylenders for settlers or by speculators. In this period 86 individuals or groups bought a minimum of 2,000 acres each, with a total engrossment of 553,000 acres. This was an average of 6,430 acres each. There were no huge holdings like that of John Grigg in Illinois but there were 15 purchases exceeding 10,000 acres and six exceeding 20,000 acres.

The Creek and Chickasaw Lands

In Mississippi and Alabama the efforts of speculators to gain ownership of choice land before the wave of settlers appeared was both aided and retarded by the presence of the Creek and Chickasaw Indians. These tribes had succeeded in withholding their lands longer than other Indian groups each of the Mississippi save the Potawatomi and Miami Indians of Indiana. The more advanced of the Indian chiefs, and the white men collaborating with them in trade, devised means by which the lands, especially the more desirable, should not, when finally surrendered to the government, be added to the public domain and consequently be opened

[63] Douglas H. Gordon and George S. May, "The Michigan Land Rush in 1836," *Michigan History*, 43 (March, June, Sept., Dec., 1959) 1–42, 129–49, 257–93, 433–78.

[64] The family of George Gale, founder of Galesburg and Knox College, long held many thousand acres in the vicinity of Galesburg. R. Earnest Elmo Calkins, *They Broke the Prairie* (New York, 1937), *passim*.

to settlement and sale under the usual laws. Instead, considerable portions of these lands were ceded in trust to be sold for the benefit of the Indians. No preemption rights were permitted on the Chickasaw lands and a provision was included in the Chickasaw supplementary treaty of October 22, 1832, which suggested that combinations at the sales should be prevented so that the Indians might get a fair return. "The Chiefs," so the treaty states, "still express fears that combinations may be formed at the public sales where their reserved tracts of land shall be offered for sale, and that they may not be sold so high as they might be sold, by judicious agents at private sale." Other plans for the sale of the trust lands were to be considered by the chiefs and submitted to the President for his approval.[65] Thus was laid the basis for sales of Indian land negotiated entirely outside the public land laws, where special interests could prevail. A minimum price of $3 an acre was to be charged for the trust lands, subject to reduction as recommended by the Indians.

Other parts of the lands of these Creeks and Chickasaws were to be granted to chiefs, subchiefs, and other members and under certain conditions these allotments were to be made alienable. The Creek Treaty of March 24, 1832, stated that all intruders on the lands being ceded and divided into allotments in Alabama "shall be removed therefrom in the same manner as intruders may be removed by law from other public land." This provision obviously was quite meaningless; the government had long since given up efforts to remove intruders from public land and was in the process of forgiving them for past intrusions by conceding preemption rights to them. However, the Creek lands could not be obtained by preemption. Through these Indian treaties a number of million acres of land passed to private ownership not by means of the statutory land laws but under provisions written into the treaties with Indians and ratified by the Senate. It is worthy of note that individual allotments and cessions in trust were made again in the 1850's in Kansas and resulted in further large alienations of land outside the general land laws.[66]

Speculative groups from the East and the South converged on Mississippi and Alabama at the sales of these Indian lands. Mary Young found that 57 individuals and groups acquired 3,019,486 acres or an average of 52,973 each. In addition, 613,859 acres were acquired by those who purchased blocks of 2,000 to 10,000 acres. Another group of 61 individuals and partnerships or companies—and there was a good deal of overlapping in these lists—acquired 1,480,709 acres. It should be added that 40 percent of the latter was sold after the period covered in this chapter. We may summarize the speculative purchases in Alabama and Mississippi before the Civil War as amounting to between 6,400,000 and 7 million acres. These figures, of course, do not include the state land nor the sales of railroad land. A considerable part of this land was assigned on the land office books, indicating that it was being bought for settlers but, of course, they had to pay tribute to the middle man. Nowhere, not even in Illinois, was there such a large amount of land bought for speculation as at the sale of these Creek and Chickasaw allotments.

Demands for Reforms

By the early forties criticism of the growing "monopoly" of the public lands was being expressed by George Henry Evans and his associates in the National Land Reform Association. Evans declared that every man had a natural right to a portion of the earth for his maintenance, that the public lands belonged to the people, and that title should be based on use, not purchase. He wanted land sales to be made to actual settlers only and to

[65] See the Chickasaw Treaties of Oct. 20 and 22, 1832, Charles J. Kappler, *Indian Laws and Treaties* (3 vols., Washington, 1904), II, 358, 363.

[66] See esp. the treaty with the Chickasaws of Oct. 20, and 22, 1832, *Kappler, Indian Laws and Treaties*, II, 341, 358, 363.

be limited to small unalienable properties. Such a policy would help to rid the cities of their unemployed and thus better the lot of those who remained.[67]

The National Land Reformers were a small group to which little attention was paid outside the ranks of urban labor. However, other events contributed to the movement for land reform. Simmering social unrest on the estates of the landlords of the Hudson-Mohawk region of New York developed into serious clashes between the tenants and the landlords over the collection of rents, the nature of the leases, and tenants' rights. Efforts to compel tenants to pay their rents, to eject those who did not, and to arrest those resisting the sheriff led to a series of violent outbursts by the Anti-Renters. The members kept the region in a state of turmoil for years, entered into politics and made landlordism unprofitable. Some of the leaders of the Anti-Renters were doctrinaire reformers whose slogans caught on but whose views on private property made little headway.

The American Land Company

Another factor contributing to the demand for land reform was the extent to which western lands were being acquired by capitalists and land companies. A number of these companies have been mentioned before but the one that attracted the most attention was the American Land Company, organized with capital of a millon dollars to invest in western real estate, including both wild lands and city lots. Not since the British colonial period when highly placed political and economic figures invested in a series of land companies had there been brought together such a group of distinguished and well-known men as those in the American Land Company. Charles Butler and Arthur and Frederick Bronson were the principal organizers. Among the large investors were Charles Butler's brother, Benjamin F. Butler, Attorney General in Jackson's Cabinet, Erastus Corning, John Van Buren, John A. Dix, and Edwin Croswell, members of the Albany Regency and leading Democrats of New York. Lot Clark, a former New York member of Congress and himself a prominent speculator in public lands, and a group of the most prominent New York and Boston bankers and brokers were also in the company. The first annual report of the company in 1836 reported that $400,000 had been set aside for the purchase of Chickasaw allotments (potential cotton land in Mississippi), $250,000 for land in Arkansas, and smaller sums for investment in land in Florida, Michigan, Ohio, Wisconsin, Illinois, and in Chicago, Toledo, and a number of other towns and cities.[68] Through arrangements with influential leaders in the West, such as William B. Ogden in Chicago, David Hubbard of Mississippi, and Lucius Lyon, Michigan's delegate to Congress in 1833–35 and later Senator from that state, the company acquired 322,280 acres and many town lots in cities and towns of eight states.[69] In the process of acquiring the 84,000 acres of Mississippi land, David Hubbard, who had been one of the ringleaders in the movement to control sales and prevent competition at Pontotoc and other offices, defended himself from the charge of bidding against a settler, saying: "If it is wrong to over-bid a settler for a piece of public land, the fault is with those who, by legislation, have ordered" lands sold to the highest bidder. "The strong will prevail over

[67] Helene S. Zahler, *Eastern Workingmen and National Land Policy, 1829–1862* (New York, 1941), pp. 29 ff.

[68] *First Annual Report of the Trustees of the American Land Company* (New York, 1836), *passim.*

[69] The American Land Company stands among the very largest of the companies investing in public lands of the United States before the era of railroad land grants. It was exceeded in amount of land owned by the New York & Boston Illinois Land Company which claimed to own 900,000 of military bounty lands in the Military Tract of Illinois in 1837, but much of this land was probably held only by tax title. The fullest account of the American Land Company is in Irene D. Neu, *Erastus Corning: Merchant and Financier, 1794–1872* (Ithaca, N. Y., 1960), pp. 129–36.

the weak, and the first settlers, who are generally poor, must go to the wall, unless protected by the generosity of land speculators." With such an attitude prevailing among its officers it is understandable why there should have been an outcry against the company.[70]

Other land companies made large investments in land they had no intention of developing without drawing unfavorable attention but they may have kept their business more to themselves. This the officers of the American Land Company did not do. In a report of its operations for 1836, the American Land Company included a list of its directors and larger stockholders, and stated the amount of money it had committed to land purchases and the acreage it expected to acquire. Since a number of the investors were also officers of banks then receiving deposits of public funds, it was easy for Whig editors to charge that Jackson's deposit of public funds in the "pet banks" was making possible and indeed encouraging the great onslaught on the public lands and the accumulation of land in the hands of the officers and stockholders of those banks. There does seem to be some inconsistency in the professions of leading Democrats in behalf of the actual settler and in the attempts of so many of the party's leaders to circumvent the settlers by thus accumulating land.

The *United States Telegraph*, a Duff Green-John C. Calhoun organ, began the attack on Jackson and the Democratic Party's land policy:[71]

> We learn that the Secretary of the Treasury has closed several of the Western land offices; and we observe that the newspapers in that quarter complain that the people are put to much inconvenience on that account. This is indeed the age of Humbugs. Who could have doubted that the heads of departments and members of Congress who have gone so largely into the purchase of public lands, would not find some pretence to shut the land offices. It is part of the plan. They first borrow the money, they then get up a tide of emigration, by puffing the West—the Great West —and when the honest settler reaches his new home, he finds that the land offices are closed, and that he is compelled to buy from Amos Kendall, or Mr. Attorney General Butler, or their agents, lands bought with the Government money at government price. Does anyone believe that Amos Kendall or Mr. Butler after having borrowed money to purchase land would sell it without a profit? And does not everyone see that, if the honest emigrant cannot buy from the Government, he must buy from the speculators? And is any one so blind as not to see the why and wherefore the Western land offices have closed?

The *New York Times* and Thurlow Weed's *Albany Evening Journal* joined in the attack, asking if Benjamin F. Butler was not an incorporator and stockholder of the American Land Company, if other Cabinet officers had not an interest in the company, if Silas Wright, New York Democratic Senator, other members of the Albany Regency, and a great many bank presidents, cashiers, and directors were not also stockholders. Had the company established settlers on and cultivated any land, inquired the *Journal*. How much land had it sold to settlers and at what advance in price? It charged that the company

> . . . over-shadowed the Republic. Such a combination of wealth and power had never before existed among us. The highest officers in the General and State Governments were stockholders in this gigantic monopoly. . . . Its agents were sent abroad through the new States and Territories to monopolize all the valuable lands. . . . The surplus Revenue then in the Pet Banks, was at the service of these speculators. Millions of dollars were invested in Michigan, Illinois, Wisconsin, Mississippi, etc. The stockholders in this overgrown monopoly were selected from the men in power. Vast political and pecuniary influences were combined. Standing at the head of the Albany stockholders were Messers Croswell and Burt, Editors and Proprietors of the State Paper. Then came John Van Buren, the son of the President of the United States. Silas Wright, Jr., a Senator in Congress, through whose influence the

[70] Letter of David Hubbard, Pontotoc, Oct. 13, 1836, in *Richmond Enquirer*, Nov. 8, 1836.

[71] Quoted in Indianapolis' *Indiana Journal*, July 23, 1836.

deposites [sic] were placed in the reach of speculators, was a stockholder in the monopolizing 'American Land Company.'[72]

The *Cincinnati Gazette* declared that the President's sanction had been obtained to permit the ALC officers to invest in Chickasaw and Choctaw allotments, that the company had cheated the Indians by so controlling sales as to prevent competitive bidding and a fair market price for the allotments. After cheating the Indians in a series of "most unrighteous bargains," charged the *Gazette*, the company voted $1,000 to buy bibles for the natives of Alabama and Mississippi.[73] The *Randolph Recorder* went so far as to hint that the administration had "opposed Distribution so that the funds of the Pet Banks would be available for Mr. Van Buren's Land Speculations."[74] These charges and others were bandied about extensively in the Whig press and touched Charles Butler in a sensitive spot for he attempted an answer, denying that John Van Buren had any interest in the company, and holding that the company was not "speculating" in public lands but "investing" in land, as it had a right to do.[75]

Some economic historians have been troubled about the use of the term speculator to apply to individuals or companies who purchased public lands to hold for a rise without any intention of developing or improving them in any way. The pioneer settler was not concerned with the means or influence by which such people were able to take advantage of the system and acquire lands through favor, but was concerned with their social usefulness. The settler did not put it in these terms but he surely had the idea. He drew the line between large owners who, like the Wadsworths of the Genesee Valley, were residents, lived upon or in the midst of their property, and devoted their energies to settling purchasers or tenants upon it, building improvements, and drawing people to the region and, on the other hand, those absentee owners who paid their taxes grudgingly, urged their agents to resist all public expenditures, and waited for the time when the improvements of others would so enhance the value of property as to enable them to sell (or rent) at the returns they expected. The American Land Company, like so many of the absentee investors insofar as their wild lands were concerned, did nothing to enhance the value except perhaps to advertise their lands, which was more than some speculators did. It did not identify itself with the welfare of the communities where the lands were located and was a "monopoly" to the local people.

The political nature of the charges against the American Land Company is obvious. The closing of land offices had nothing to do with the activities of the company; Whig leaders were also investing heavily in western lands and, like the company, borrowing from banks receiving Federal deposits. What made the American Land Company more vulnerable was that some of its investors and officers were prominent Democrats and it operated out in the open on such a large scale.

In 1836, almost before the American Land Company had completed its purchases acquired at $1.25 an acre, it was advertising its Mississippi land for sale, as follows: 2,400 acres in Warren County near Vicksburg at $7 to $10 per acre; 15,200 acres in Washington County at $15; 1,139 acres in Holmes County at $20; 1,176 acres in Yazoo County at $10 per acre; 4,100 acres in Rankin County at $10; and 5,300 in Scott County at $10 an acre. John F. Scott, the agent for the lands, announced that after 2 years he would buy

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[72] *Albany Evening Journal*, reprinted in the *Chicago American*, Aug. 12, 1839. Only a few years before, the Democrats had been making the same charges against the Second United States Bank.

[73] Quoted in the *Havana Republican*, Nov. 27, 1839.

[74] *Randolph* (Tennessee) *Recorder*, Sept. 16, 1836.

[75] Copy of letter of Charles Butler, New York, Aug. 17, 1836, to T. O. Davis, in Butler Papers, Library of Congress and published in the *Albany Argus*, Sept. 30, 1836.

back at 50 percent advance any tract purchased from him if one quarter had been opened and cultivated, and he would guarantee the purchaser at least 6 percent interest per year on his investment "or the labor employed during those 2 years, if worked in the customary way." Some land may have been sold at these prices before the crash of 1837, but if so all such sales probably fell into default after the crash.[76]

The Specie Circular

There had been much talk in the press and many speeches in Congress about the great amount of speculation in land by various interest groups, particularly by members of Congress, but attention was focused on the American Land Company and the prominent Democrats connected with it. There were other prominent politicians speculating in government land who did not attract public attention to the same degree. Among them were Arnold Naudain, Daniel Webster, whose purchases in Illinois, Missouri, and Michigan were extensive, Caleb Cushing, Lucius Lyon, agent of the American Land Company, Robert J. Walker, Henry Hubbard, Senator from New Hampshire, and John Tipton, Senator from Indiana. An investigation seemed called for, and on June 20, 1836, the House of Representatives appointed a select committee "to inquire whether any member or members of Congress, head or heads of Departments, or any other officer of Government," have received any aid from persons employed by the government or from banks in borrowing to speculate in public lands. The committee made a superficial investigation, was denied any practical help by two Washington banks, and heard from only one witness who admitted knowing of a number of companies that were buying Indian land and public land; he declined giving names or other specific information. The committee concluded by recommending that if the House wanted to continue the investigation the membership of the committee should be enlarged and it should be permitted to sit during recess.[77]

If Congress was not prepared to act to check the excessive speculation in public lands made possible by the ease of borrowing paper currency from the banks, Andrew Jackson was. Why he was moved to do so is not easily explained for there is little in his past to indicate that he disapproved of large scale purchases of public land solely for speculation. He had purchased public land in the past with no apparent intention of developing it and had been closely associated with a motley crew of speculators operating on a much larger scale than he. Furthermore, he had pushed hard for the removal of the Creeks and Chickasaws from Alabama and Mississippi, had brought their allotments into market and had offered a total of 25,400,000 acres of Indian trust and public lands at public sale in these two states and Indiana.[78]

Yet in Jackson's State of the Union Message to Congress on December 4, 1832, he had declared, "The speedy settlement of these lands constitutes the true interest of the Republic. The wealth and strength of a country are its population, and the best part of that population are the cultivators of the soil. Independent farmers are everywhere the basis of society and true friends of liberty." He then went on to say that the true policy toward the public lands was that they should cease to be a source of revenue, and should be sold in limited tracts "at a price barely

[76] *Richmond Enquirer*, Oct. 4, 1836.

[77] *House Reports*, 24th Cong., 1st sess., July 2, 1836, Vol. III, No. 846 (Serial No. 295). Preston S. Loughborough, the one witness, was a chief clerk in the Post Office Department. Three months later Loughborough, or an agent acting for him, was at Danville, Ill., where he entered 9,925 acres of land at the minimum price, but whether it was acquired with funds borrowed from a pet bank is not apparent.

[78] Young, *Redskins, Ruffleshirts and Rednecks*, pp. 182 ff. Speaking in the Senate on Jan. 26, 1838, Benton declared that Jackson had withheld all new surveys from market in 1836. *Cong. Globe*, 25th Cong., 2d sess., p. 141.

sufficient to reimburse" the government for the cost of survey and management. At the appropriate time the Federal machinery of management and sale should be withdrawn and the land turned over to the states. In his veto of the distribution bill of 1833 Jackson had recommended that the public lands should be reduced in price and graduated according to the length of time they had been open to sale and after a number of years the remaining lands should be ceded to the states. Few Presidents have taken as strong an agrarian position as Jackson. He was sympathetic to the West's position concerning cession and graduation, yet he said nothing about speculation until his last years in office.

Jackson, Chief Justice Taney, and Levi Woodbury, Secretary of the Treasury, became alarmed at the way speculators were pyramiding their investments in public lands, borrowing from local banks by giving mortgages on undeveloped property valued at a high level, buying additional land and borrowing on that to buy still more. The only way to stop the mushrooming growth of speculation, they decided, was to order the receivers of the land offices to accept nothing but specie for lands after August 15. On July 11, 1836, such an order was issued stating that the action was taken "In consequence of complaints . . . of frauds, speculations, and monopolies, in the purchase of the public lands, and the aid which is . . . given to effect these objects by excessive bank credits . . . ." Actual settlers were given until December 15 to enter as much as 320 acres with paper currency. The Specie Circular reiterated in its final paragraph that the action was taken "to repress alleged frauds, and to withhold any countenance of facilities in the power of the Government from the monopoly of the public lands in the hands of speculators and capitalists, to the injury of the actual settlers in the new States, and of emigrants in search of new homes, as well as to discourage the ruinous extension of bank issues, and bank credits, by which those results are generally supposed to be promoted . . . ."[79] In December, Jackson attempted to summarize the results of the circular, saying that it had checked the unsound and dangerous activities of the western banks, it "cut off the means of speculation and retarded its progress in monopolizing the most valuable of the public lands. It has tended to save the new States from a nonresident proprietorship, one of the greatest obstacles to the advancement of a new country and the prosperity of an old one. It has tended to keep open the public lands for entry by emigrants at Government prices instead of their being compelled to purchase of speculators at double or triple prices."[80]

End of an Era of Expansion and Credit

One may say that the issue of the Specie Circular, or some similar action by the government, to curb the tremendous increase in the quantity of paper money in circulation and its use to purchase public lands for speculation was long overdue, that the circular did sharply reduce though by no means end large scale buying, and that by slowing down land entries by capitalists it gave settlers additional time to select land. But the action came late, millions of acres had been acquired by land companies and individuals for which there was to be no market for years at the base price plus the profit the investor anticipated. Much of the land became tax delinquent, not contributing its share to the development and maintenance of roads and other public improvements; much was taken up by squatters who put the most meager improvements on the land; trouble developed over the ownership of the improvements and such areas acquired an unfavorable reputation among incoming immigrants. The Panic of 1837 and the secondary letdown of 1839 brought the era of expansion and inflated credit to an abrupt close, slowed down

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[79] Commager (ed.), *Documents of American History*, p. 283.

[80] Commager, *Documents*, p. 284.

appreciably both immigration from abroad and westward migration, and changed the rosy optimism of the boom period to one of questioning pessimism.

Undoubtedly, Jackson's issue of the Specie Circular, his recommendation that the public lands be sold to actual settlers only and in small tracts, and his stoppage of public land offerings at auction did much to offset the attacks the Whigs were making upon his administration and contributed to Van Buren's victory in the fall of 1836. But the Whigs refused to let the country forget that the Jackson administration had aided speculation by depositing Federal funds in the pet banks and by pushing surveys and bringing great quantities of lands into market before 1836; that leading Democrats had been organizers of and heavy investors in the largest capitalistic combination yet founded for investing in public lands; that intimates of Jackson and Van Buren had a part in the company; and that many other Democrats had used funds of the pet banks to buy large quantities of public lands. That prominent Whigs were also involved in land speculation was less recognized, and none of them openly called attention to their investments or advertised them as boldly as did the American Land Company.

Van Buren smarted under the attacks but went on ordering lands into market, despite a statement in his first annual address to Congress that the government should "discountenance . . . the accumulation of large tracts in the same hands, which must necessarily retard the growth of new States or entail upon them a dependent tenantry and its attendant evils."[81] In fact, in the first 3 years of his administration more land was ordered into market—56,686,000 acres—than in any comparable period in American history and more than five times as much was sold during these years. What was worse, these offerings came at a time when money grew increasingly scarce, especially in the West.[82]

The widespread attacks upon the American Land Company with the continued inference that Van Buren himself or his family benefited, the emphasis upon the Federal deposits in the pet banks and their relationship to land speculation, the insistence of the administration on putting up millions of acres of land for sale in Iowa, Illinois, Wisconsin notwithstanding the barrage of petitions pleading for postponement, all carried heavy weight with people on the frontier. In 1840 Van Buren lost four of the nine public land states—Indiana, Michigan, Louisiana, and Mississippi. In all four, large quantities of public land had been ordered to sale between 1837 and 1841. Had he carried all the new states created since 1789 and won an additional 350 votes in Pennsylvania he would have had the election. Van Buren's alleged use of silver spoons and gold plates may have had some influence with people in determining their votes in 1840, but the greater likelihood is that his vulnerable record on public land matters was a more significant factor in his defeat.[83]

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[81] Richardson, *Messages and Papers of the Presidents* (1904), III, 385.

[82] During the 4 years of the Van Buren administration six petitions urging postponement of sales came from Illinois (one being signed by 955 persons), seven came from Wisconsin, two from Michigan, five from Iowa, two from Missouri, one from Louisiana, and one from Indiana. The correspondence and petitions in the Treasury Department Files in the National Archives are too numerous to list here.

[83] For the election returns see Edward Stanwood, *History of the Presidency* (Boston, 1898), pp. 203–204.

CHAPTER IX

Cash Sales, 1840-1862

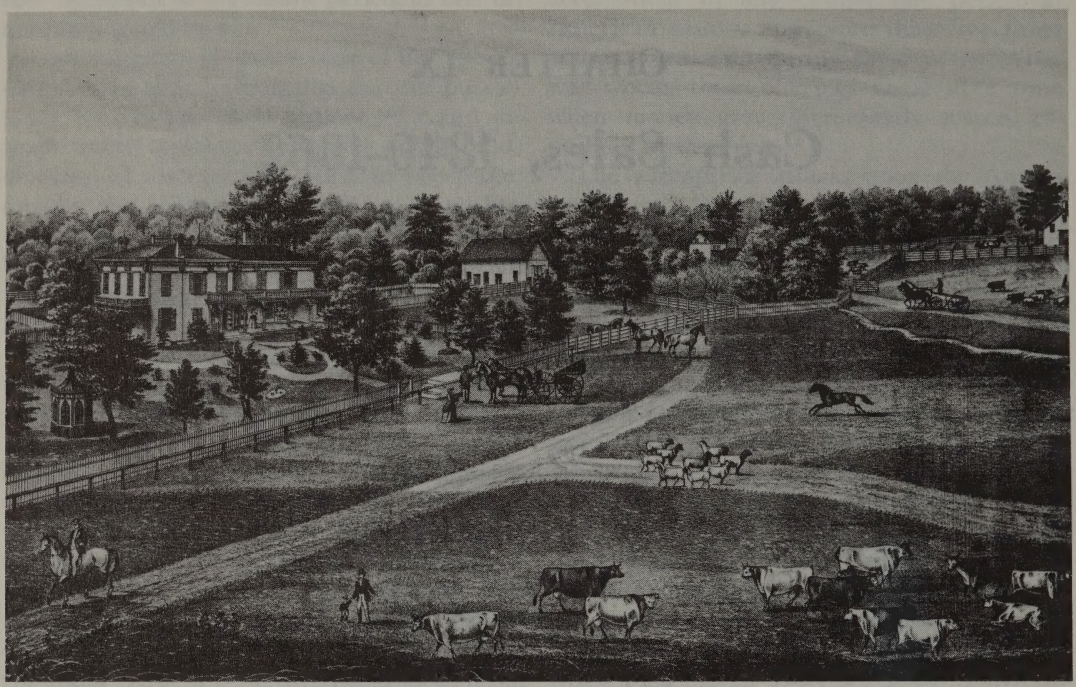
The attitude of the West was ambivalent on the question of having the public lands surveyed and opened to purchase far in advance of need or ability of settlers to buy. The ideas of a closed or limited frontier, of directed and compact settlement, and of rigidly accepting the boundaries separating Indian reserves and unsurveyed lands from those that had been prepared for sale, were anathema to the usual westerner, as Benton had shown in his colorful condemnation of the Foote Resolution in 1829.[1] Westerners wanted freedom to go wherever the spirit moved them, to strike into new territory, to get far away from settlement. At the same time they wanted a stake in the land with the privilege of selling a relinquishment of their improvements or of mortgaging the land they had selected to obtain capital for additional improvements.

As we have seen, squatters protected themselves against the loss of their claims at public land sales by their claims associations and by arranging with moneylenders to enter claims for them. After 1841 they were protected by the Preemption Act. With the exception of squatters' or preemption claims, capitalists could enter at the public land sales and afterwards whatever tracts looked most promising and could buy as much land as their resources permitted. In the earlier years, westerners took pride in the fact that capitalists were buying land in their midst, thereby showing confidence in the region; they watched the statistics of rising public land sales with much approval. Disillusionment soon came, however, when they saw the absentee-owned lands barren of improvements, not carrying their weight in the community, and yet held for prices beyond those new settlers could afford to pay. Then residents of the frontier communities turned from approval to sharp disapproval and to questioning the Jackson–Van Buren policy of opening huge areas of land to sale. An increasing element in the West that had no part in the land business as representatives of absentee capitalists or as landlookers or agents, came to feel that it would be far better to allow settlers to spread over newly surrendered Indian land, unhampered by the speculators or by the need to raise funds to purchase their claims until they had become well established.

The Panic of 1837 reversed the long period of economic expansion in industry and in domestic and overseas commerce and checked somewhat the growth of urban centers, immigration from Europe, the westward movement of population, and the creation of new farming commonwealths. Specie payments were resumed in 1838 and conditions seemed to be improving until 1839 when a second and worse crisis hit the economy. Banks again suspended specie payments, more banks closed their doors for good, internal improvement programs of the states were abruptly halted, land sales tumbled, and the country entered a long sustained depression that reached a low point in 1842 and 1843.[2]

[1] *Register of Debates*, 21st Cong., 1st sess., Dec. 30, 1829, Jan. 18, 1830, pp. 2–7, 23.

[2] The low point of immigration, land sales, tobacco and wheat prices was 1843; for cotton it was 1844. Thomas Senior Berry, *Western Prices Before 1861* (Cambridge, 1943), pp. 425, 434, shows that the low point in commodity prices was reached in 1843.



Residence of Isaac Funk, Prairie Landlord
Atlas of McLean County, Illinois, *1874*

President Van Buren, driven to find additional sources of revenue to reduce the national deficit, if not to balance it, turned to the public lands. True, public offering of land in these trying times would work a hardship on those who had to raise the money to buy their claims but Van Buren had no alternative. Had he not ordered western lands to sale, the government deficit of 1838 might have been 40 percent greater than it was, the surplus of 1839 might have been turned into a deficit, and the deficit of 1840 might have been doubled. All this, together with an impending deficit of $11 million in 1841, which was to be followed by smaller deficits in 1842 and 1843, was enough in those pre-Keynesian days to alarm any responsible official.[3] It was not so apparent to any but the hard pressed squatters that the money supplied by eastern moneylenders, land speculators, and western settlers was to be the factor easing the government crisis.

It may be asked whether the sharply reduced sales of 1840 to 1845 are an accurate index of a leveling off in economic development on the frontier. Although no computerized study has been made of land entries in

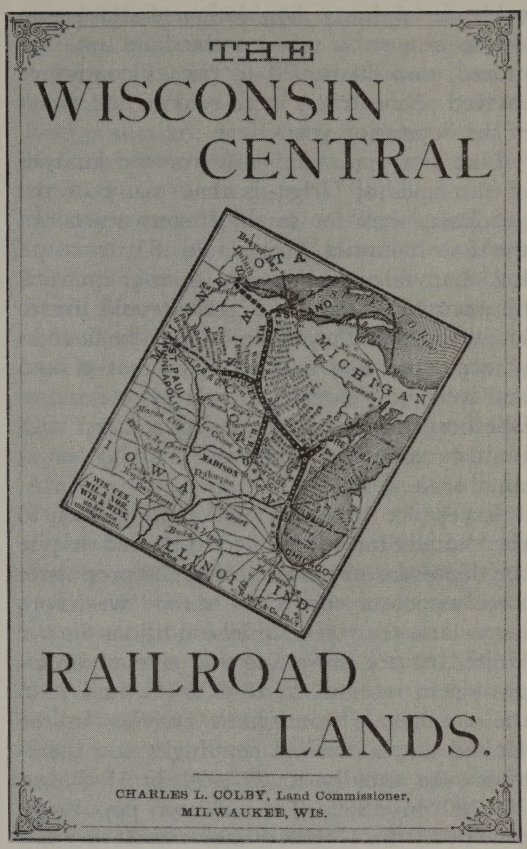
[3] James D. Richardson, *Messages and Papers of the Presidents* (1904), III, 385. Here, as elsewhere, the data concerning public proclamations of sales and sales are taken from the *GLO Annual Reports*, and the statistics of income and expenditures are from *Historical Statistics of the United States* (Washington, 1960), pp. 711–12.

1835–37 sampling suggests that a very substantial part of the 38 million acres sold had been bought for speculation by large and small investors. Many of these speculators who had invested with borrowed money found themselves unable to carry their purchases as interest and costs of supervision accumulated and the lands became taxable 5 years after purchase. The liquidation of these insecurely financed estates was proceeding while Federal land sales remained small. (The wiser speculators had taken care to select the better lands and they naturally attracted purchasers.) Sometimes during these trying years prices obtained at these forced sales were lower than the government minimum. Sales statistics for the bleak years following 1839 are not, therefore, an adequate index of either westward migration or the progress being made in western development because they represent only a part of the land going into farms. Farmers owning their land continued to improve it, investing their labor in the hope that prices of agricultural commodities would improve and give them a good profit.[4]

LAND SALES OF JOHN GRIGG[a]

Year	Tracts	Acres	Price
1837	1	80	$4.00
1838			
1839	1	80	5.00
1840	4	240	2.00
1841	2	200	4.40
1842	1	160	3.00
1843	1	48	3.56
1844	1	80	3.00
1845	5	240	2.66
1846	5	320	3.00
1847	4	240	3.00
1848	11	720	2.91
1849	13	1,154	3.35
1850	33	2,596	2.98
1851	36	3,309	3.35

[a] Compiled from deed records in Sangamon, Christian, Logan and McLean Counties, Illinois.



Cover of an example of railroad brochures which were widely distributed to encourage westward migration.

The land sales of John Grigg, the Philadelphia publisher who in 1835 and 1836 acquired some 115,000 acres of land in central Illinois, are instructive. Grigg was not troubled by lack of funds to carry his investment, and in four of the counties in which he had centered half of his land entries, there is no

[4] E. M. Huntington, GLO Commissioner, brought out this point in explaining the drastic decline in land sales in a letter to Walter Forward, Secretary of the Treasury, Nov. 30, 1841, Letters from Executive Officers, Vol. II, 1841, Treasury Annex I.

evidence of hasty liquidation. Sales began slowly almost as soon as the land was acquired, and continued to rise as conditions revived. Nine tracts were sold in the worst of the depression years.

One fact that stands out from an analysis of the sales of Grigg is that many of the purchases were for small, 40-acre tracts. In the four counties Grigg sold 83 tracts of less than 50 acres, mostly quarter-quarters between 1837 and 1852.[5] One would like to know whether they were bought by farmers who already had a small stake in the land and were now extending their operations, or whether they were made to settlers with limited resources who were starting on a small scale.

Except for 1838 and 1843, immigration to the United States continued to expand despite the depression, indicating that the propulsive force of poorer conditions abroad was more important than economic conditions in the United States in setting the tide of immigration in motion. In 1842, 1845, and 1846 the number of immigrants arriving in the United States reached new highs and thereafter rose rapidly to 297,024 in 1849 and 369,980 in 1850. The rate of population growth in the United States was 35 percent in the forties as compared to 32 percent in the previous decade. America was headed for another period of rapid economic expansion which was to be accompanied by another and greater onslaught on the public lands and by major changes in the manner of public land disposal.

Neither the West nor the East was satisfied with the compromises it had made to assure passage of the measures providing for the management, survey, and disposal of the public lands. Congressmen from the East could not forget that their cessions had first created the public domain and that their tax money was used to acquire Louisiana, Florida, and California, but that when it came to granting lands for worthy purposes only the West received grants. Public schools, universities, roads, canals, and, beginning with 1850, railroads were being aided in western states with generous subsidies of public lands, but no such aid was forthcoming to the eastern states. At the same time, the West was contending that pioneers who were creating the new commonwealths and pushing the frontier farther west were being penalized by having to pay for land whose value they created by their labor. The West also resented the uniform price that applied to all public lands, no matter how broken, hilly, swampy, or infertile they might be or how long they had been subject to entry and rejected by landlookers.

Partisans of both sections advanced many arguments in behalf of their favorite proposals. The West first demanded cheap land graduated in price by the length of time it had been in the market, and, subsequently, free land. The East wished to maintain a high-price policy to prevent the draining off of its population and to assure revenue for the government. It looked with favor on grants for internal improvement, for agricultural colleges, and for improvements in the care of the insane, if such grants would directly benefit their section.

After the adoption of the Preemption Act of 1841, the first major change in public land policy which made land cheaper was the issuance of bounty land warrants to those who had served in the armed forces during

[5] Neither Grigg nor his agents pressed their land on the market to get early sales nor did they seem to have difficulty in making collections. The modest advances they made in prices suggest that they were willing to accept lower prices for cash, whereas most agents and owners strove to get the highest possible price by offering terms of 4 and more years. The two largest sales made by Grigg were 3,589 acres in Morgan County sold for $10,808 to Jacob Strawn, who was developing a bonanza farm, and 1,320 acres in Sangamon County sold in 1858 to John J. Mitchell for $11,880. The business was nearly closed out in Sangamon County by 1864; by then 26,992 acres had been sold for $123,387. This was no fabulous profit but probably constituted a fair interest on the original investment after the deduction of all costs.

the Mexican War. Unlike the warrants of the Revolution and the War of 1812, the new issues were not limited to any area but could only be used to acquire lands which were open to private entry. This restriction prevented warrants from being used to preempt land before the auction sale, unless they were used by the warrantees themselves. Furthermore, warrants were not divisible. Persons wanting to enter a fractional tract of 135 acres had to surrender the entire 160-acre warrant. These factors plus the great volume of warrants depressed their price and they never brought a full $1.25 an acre. Actually they sold for much less most of the time they were in circulation. To the degree that they brought less than $1.25 an acre they depreciated the price of land but, as we shall see, it was speculators rather than settlers who benefited from this boon.

Next in the process of making public lands easier to acquire were the Swamp Land Acts of 1849 and 1850 by which 64,910,000 acres were turned over to the states to aid them in draining lands classified by them as wet. For the most part the states quickly disposed of their swampland grants without accomplishing the purpose for which the land had been granted. If we may judge by the records of the disposal of swamplands in Indiana, Illinois, Louisiana, and California the greater part of the lands went to parties who were already large investors in land which they might or might not be developing. The concentration of ownership in these four states was largely accentuated by the Swamp Land Acts.

A third major innovation in land policy which, however, had its origin in 1824 and 1827 when grants of land were made to the States of Ohio, Indiana, and Illinois for the construction of canals and roads, reached a new phase in 1850 when Congress began granting the states alternate sections of land within a 12-mile strip along proposed rights-of-way to aid in the construction of railroads. The first major impact of this subsidization policy was felt in the fifties when a number of canals were brought to completion and railroad construction was being pressed forward rapidly in the West. Military bounty lands, the Swamp Land Acts, and the railroad land grants are dealt with in more detail in later chapters; suffice it to say here that they speeded up the transfer of public lands to private ownership, and enabled speculators to acquire large blocks of land and to create land companies, bonanza farms and ranches. More than all this, it was the advertising by these land companies and railroads, territorial and state immigration officials that made the attractions of the American West known to the farm population of the worn-out hill areas of the Northeast and the southern Appalachians, and to peasants of western Europe. Never before had so many people decided to abandon their homes and to strike out for western America as in the 1850's.

To use charts of public land entries or income from public land sales as an index of economic conditions in the United States, and especially of those in the newly developing West, calls for careful qualification.[6] For example, many millions of acres of attractive and promising land were withdrawn from sale or entry of any kind to prevent persons from anticipating railroads in selecting land which the companies had been promised as subsidies. When the railroads had completed their surveys, selected their routes, and located their primary and lieu grants, the remaining public lands were restored to entry. The first withdrawals for railroads were made by telegraphic order to the land offices in Illinois, Alabama, and Mississippi immediately after the passage on September 20, 1850, of the grant for a railroad from Chicago to Mobile. During the Pierce administration the scramble for grants by Representatives from all the public land states

[6] Arthur H. Cole, "Cyclical and Sectional Variations in the Sale of Public Lands, 1816–60," *Review of Economic Statistics*, IX (January 1927), 41–53; Paul W. Gates, "Charts of Public Land Sales and Entries," *Journal of Economic History*, XXIV (March 1964), 22–28.

created a veritable Donnybrook Fair in the Congress, with frantic efforts being made to swap votes and gain the desired objectives. But lands were being sold or entered with scrip at a frantic rate also and there was grave danger, it was thought, that the best of them would be taken up before the railroad bills got through Congress and the withdrawals could be made. Consequently, at the urging of members of Congress, Pierce in 1853 issued orders withdrawing 31 million acres of public lands from entry, thereby striking hard at settlers who had already settled or made claims on some of these lands and disappointing speculators who had hoped to enter large amounts with scrip. Congress soon was so bogged down in issues over Kansas, however, that the land grant measures were not enacted as hoped. Lacking specific authority to make such withdrawals, or at least being uncertain that he had it, and also entertaining doubts about the wisdom of withdrawing public lands for railroads that might never be constructed, Pierce restored the lands to market in 1854.[7] Then in 1856 and 1857, despite the President's lukewarm attitude toward land grants for railroads, Congress pushed through five measures providing land grants to seven states and one territory to aid in building railroads. Withdrawals of all public lands within the exterior boundaries of the grants quickly followed, again upsetting the plans of settlers and other prospective land buyers in the areas affected. Special efforts, not altogether successful, were made by the General Land Office to have the lands selected as speedily as possible and the balance returned to sale.[8]

As the frontier was pushed westward, settlers and speculators travelled widely over the areas open to purchase, selecting what appeared to be the richest and best located land with respect to transportation and markets, availability of water and standing timber. The amount of local and state debt outstanding, tax policies, the flow of immigration, the rate of land sales, and the general image of the region as described by the writers of guidebooks were other factors to be considered. Not all landseekers kept each of these issues in mind. Many were deceived by guidebooks, gazetteers, and advertising pamphlets, whose authors in some instances were promoting the sale and settlement of definite areas to the detriment of others. We know that for long years southeastern Michigan was avoided because of its early unfavorable and largely unjustified reputation. We also know that southern Illinois—called "Egypt"—acquired a reputation as a poor, unhealthy area and was spoken of as the "land of darkness."

Graduation of Land Prices

Left behind by the vanguard of land buyers was what appeared at that time to be undesirable land—sometimes fractional quarters, hilly, broken, cut by ravines or streams, swampy or low land unpromising for crops. If such land near the prairies had timber this one valuable asset soon disappeared unless there was an occupant on the land to protect it. If the broken land was suitable for pasture or had good grass for hay, nearby owners saw little reason to buy it and pay taxes on it as long as they could graze their livestock on it and make hay of its grass without cost. Everywhere in the West the process of land selection had left behind these neglected tracts, stripped of their timber, overgrazed, contributing no taxes and having no owners to do compulsory road work. We may illustrate the scattered character of these neglected lands, unwanted at $1.25 an acre, by a glance at the remaining holdings of public land in some of the states.

In the Winamac district of northern In-

[7] For Pierce's turgid explanation see Richardson, *Messages and Papers of the Presidents*, V, 281–90.

[8] Norman Olaf Forness, "The Origins and Early History of the United States Department of the Interior" (Ph.D. dissertation, Pennsylvania State University, 1964), pp. 142–46. Pierce seems to have changed his mind again, for by 1855 he no longer looked upon land grants with the same favor.

diana there were 201 townships which contained approximately 4,628,000 acres.[9] In 1854, 82 townships contained no land that had been on the market 10 or more years, 15 had only a single 40-acre tract, 14 contained only 80 acres, and 40 contained from 120 to 320 acres. In the entire district there were only 71,350 acres which had been open to purchase for 10 years. In the Indianapolis district only one township contained land that had been open to entry for that length of time. The 4,040 unsold acres in this district had been subject to entry for 35 years. In the rougher and poorer land districts of southern Indiana there was much more refuse land. The total for the state amounted to 458,700 acres. In all of Ohio only 70,495 acres were left and they had been available for 35 years. In Illinois the remaining lands were widely scattered, with few large tracts.

Elsewhere in areas long opened to settlement the story was different. Scattered tracts of 40 to 160 acres in good townships and blocks of 5,000 to 20,000 acres, even entire townships, had been left behind as settlers rushed westward. In the Jackson district of southwestern Missouri there were many townships proclaimed for sale as early as 1820 in which the entire acreage was still open to entry. Though Missouri had nearly a million people, 13,850,020 acres had not attracted buyers for 10 or more years and of these 6,468,020 acres had been offered in 1820. Actually, more land remained unsold after it was offered than had been sold. We may conclude, then, that in Missouri surveys and proclamations of sales had been pushed far beyond the demands of settlers and other land buyers—that is, if the primary goal had been compact settlement of the country. Politicians, anxious to provide patronage for the faithful, found pushing surveys without regard to the actual pressures for land a way to make jobs and contracts available for their supporters.

As of 1854 the public land states except California and Florida had been largely, if not entirely, surveyed and in all but Ohio, Indiana, and Illinois there were large areas, even entire townships which had long been neglected by land buyers. In a tier of nine townships in the St. Stephen's district of Alabama, one township had not yet been offered for sale. In seven others which had been proclaimed for sale in 1834 either no sales or sales of less than a thousand acres had been made and in the last township only 3,000 acres had been sold. Yet, in the same district some townships had no public lands left and a few had scattered 40- or 80-acre tracts unsold. In the Elba district of southern Alabama practically the entire area of 88 townships remained unsold—2 million acres that had been on the market from 16 to 32 years.

Westerners were irked that so many acres were neither being developed nor taxed (some tracts may have harbored squatters with the most meager improvements and little concern about ownership) and reasoned that they did not sell because they were held at prices beyond the current values. A practical way of dealing with them would have been to have had them appraised and sold at what was a fair value, but such a policy would have involved planning and the employment of many people to investigate and report on them. Conflicting ideas as to the value of wild land on the frontier made such a solution of the problem impossible. Thomas Hart Benton came up with a simple way of handling the matter that did not involve any additional bureaucratic machinery and seemed certain to bring about the purchase of much land: to reduce the price of land in relation to the length of time it had been on the market. Throughout his congressional career, which began in 1820, Benton worked per-

[9] Taken from a report of Thomas A. Hendricks, GLO Commissioner, Dec. 24, 1855, showing the status of all land subject to graduation entry in the various land districts. *H. Ex. Doc.*, 34th Cong., 1st sess. 1855–56, Vol. V, No. 13 (Serial No. 847), pp. 1–470. The table showing the acreage of land subject to graduation entry by states is on page 470.

sistently for graduation. In 1828 he succeeded in having the registers and receivers of the numerous land offices attempt a classification of the lands in their districts; the result showed that they regarded an extraordinarily large amount of land as either nearly worthless or distinctly inferior. As for average values, their estimates were that the $1.25 price was altogether too high for much of the land. Their figures are not entirely meaningful for they were merely superficial estimates and are quite incomplete, but they are interesting as a reflection of local ideas about land values: 50 cents to $1.03 for Ohio lands as yet unsold, 44 cents to $1.25 for Indiana lands, 12½ to 62½ cents for Missouri lands, 5 to 40 cents for Alabama and Mississippi lands. We have no explanations of their appraisals.[10]

Graduation was before Congress in almost every session from 1820 to 1854. Jackson and many westerners favored graduation, to be followed after a number of years by cession of the balance of the unsold land to the states. Legislatures of the four states in which the largest amount of land would be available at graduated prices petitioned Congress for enactment of the plan. Jackson, Van Buren, and Polk all called for its enactment.

A later (1848) report of the House Committee on Public Lands demonstrated that some land classified at one time as poor, inferior, or unsuitable and not worth the government price of $1.25 an acre, sold readily at that price when conditions improved. True, this committee was stacked 6 to 3 by Representatives from non-public-land states who were searching for evidence to oppose graduation. It used the same arguments against graduation that eastern Representatives had used a generation earlier against efforts to reduce the price of land, to grant preemption, and to allow 5 percent of the net revenue from land sales to the states.[11]

The pressure for graduation was coming from the public land states of the South and Missouri where far the larger proportion of land that had been on the market from 10 to 35 years was situated. All the warmest supporters of graduation—including Benton, W. R. W. Cobb of Alabama, Robert J. Walker and Daniel Hubbard of Mississippi—were from the slave states. Of the 10 western votes in opposition in 1854 in the House only one was from a southern public land state.[12] Benton and other advocates of graduation endeavored to give the impression that the only lands to be subject to graduation were widely scattered refuse tracts that had been carefully picked over and discarded for better lands. As has been seen, this was about correct for Ohio and Indiana, somewhat less correct for Illinois and not at all true of Missouri or the southern states. Despite their professions, the advocates of graduation seemed to be working for reductions in price as a step toward free land.

Students of western history should inquire why Benton, the political broker for the land barons of St. Louis and later for those of California, and David Hubbard and Robert J. Walker, who had been involved in the largest of the speculative deals in Mississippi and Alabama in the thirties, came to be such ardent champions of graduation. In fact Benton made a career of his advocacy of this measure, and Walker derived considerable mileage from his support of it. Hubbard, it will be remembered, had been connected with the American Land Company, in which he held 50 shares, and had acted as its representative, buying and managing its huge holdings in Arkansas and Mississippi. When he was a member of Congress he appealed for votes for the graduation measure and made it appear to be one for the benefit of the small man.[13]

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[10] *American State Papers, Public Lands*, VIII, 885–86.

[11] *House Reports*, 30th Cong., 1st sess., June 23, 1848, Vol. III, No. 732 (Serial No. 526), *passim*.

[12] John Curtis Crandall, "The Graduation Act of 1854" (Master's thesis, Cornell University, 1946), p. 15.

[13] Letter of Hubbard from Pontotoc, Mississippi, *Richmond Enquirer*, Nov. 8, 1836; *Cong. Globe*, 33d Cong., 1st sess., p. 913.

Graduation was not designed largely to get refuse lands into private ownership unless one assumes that whole townships were refuse, nor to aid small farmers to get land, although there was much talk about the small man buying the low priced lands which otherwise he could not afford. In fact there was a movement led by Roland Jones of Louisiana to remove all limits on the purchase of graduated land. Jones maintained that there were many hundreds of thousands of acres in his state which would never sell for $1.25 or even 75 cents an acre but might sell for 12½ or 25 cents for grazing or for timber. He opposed the 320-acre limitation in the bill on the ground that it was class legislation.[14]

John Wilson of the General Land Office came closest to understanding the objectives of Benton, Cobb, and other supporters of graduation. He showed that for years it had been the practice to survey and bring into market each year 10 million acres, when 1 to 3 million would have supplied the demand. Thus as much as four-fifths of the offered land was annually left unpurchased. It would be absurd, he declared,"to suppose that there was not much, very much, as good land remaining as any that had been sold." In this way the millions of acres of offered and unsold land which it was now proposed to unload through graduation had accumulated. He feared that after the first settlers had selected land in new communities, those who came later would wait for the graduation price and that henceforth the government would sell fewer acres at $1.25 than if graduation were not adopted.[15] In the light of later developments we may conclude that the advocates of graduation were primarily concerned with lowering the price of land, that the limitation of 320 acres to each purchaser was window dressing, for no effective way of enforcing the restriction was included other than the threat that persons swearing falsely that they had only acquired a half-section under the act would be subject to the penalties for perjury. By 1854 this threat had little effect in the West where perjury in public land matters was notoriously common and rarely punished.

Congressmen could have learned about the prospects of sales from graduation if they had looked critically at the result of the sale of the Chickasaw trust lands of Mississippi. By the Treaty of October 20, 1832, as modified by a Treaty of May 24, 1834, the Chickasaws had ceded their 6,718,000-acre reserve in northern Mississippi to the United States to be sold for their benefit. Some 2,685,000 acres were patented as individual allotments to Chickasaw Indians. Most of these allotments quickly passed to white settlers and speculators. No claims to preemption were to be allowed on the trust lands and the United States bound itself to use its best endeavors to interdict any combinations planned to keep the land from selling for its full value.[16] After the Indians had left and the lands had been surveyed into townships, sections, and quarter-sections, they were to be offered at public auction at a minimum price of $1.25 an acre and if not sold were to be subject to private entry at the same price for a year. For the next year the remaining lands were to be open to purchase for $1.00, in the third year for 50 cents, the fourth year for 25 cents and the fifth year for 12½ cents. If the cost of managing the lands in the fourth or fifth year proved greater than the return from them, the residue might be abandoned to the United States. Here the principle of graduation was applied for the first time.

Between 1836 and 1850 these Chickasaw lands were being sold, first at the minimum price and after 1837 at the graduated prices. Not all were offered at the same time and as late as 1850 a few tracts were still subject to entry at 50 cents an acre. The balance of the unsold lands was open to purchase at

[14] *Cong. Globe*, 33d Cong., 1st sess., April 13, 1854, p. 959.

[15] *Ibid.*, p. 906.

[16] Charles J. Kappler, *Indian Affairs. Laws and Treaties* (2 vols., Washington, 1904), II, 358, 421–22.

12½ cents. Total sales for the 15 years were 3,997,558 acres and the total income was $3,181,003, or an average of 79 cents an acre. The table of sales and average prices by years is instructive regarding the market value of the lands:[17]

SALES OF CHICKASAW TRUST LANDS[a]

Year	Acres	Amount Received	Average Price Per Acre
1836	1,304,150	$2,168,602	$1.66
1837	192,622	328,895	1.70
1838	281,367	195,020	.69
1839	639,452	246,101	.38
1840	437,654	78,273	.17
1841	304,143	46,356	.15
1842	74,728	10,658	.14
1843	36,345	6,221	.17
1844	124,269	78,352	.63
1845	161,365	51,811	.32
1846	185,414	60,059	.32
1847	138,128	31,674	.23
1848	74,403	13,638	.18
1849	36,419	6,160	.16
1850	34,936	4,584	.13

[a] An additional 36,055 acres reserved for Chickasaw orphans and presumably selected because of the improvements on them sold for $155,728.

W. R. W. Cobb of Alabama, commenting on the experience gained from the application of graduation to the Chickasaw lands in Mississippi, maintained that the result was that all the land, "almost every acre," had been taken up by settlers. He was somewhat indiscreet in declaring that there was "nothing but pine deserts and mountains, now vacant" in his state. Almost any land would sell if offered at a sufficiently low price.[18] What is important about the experience of the government in selling the Chickasaw lands is that without the usual kind of controls that prevented competitive bidding and inflexible basic price the lands were permitted to seek their own price level and that in doing so, well over half of them were appraised by the market at far below the government minimum of $1.25 an acre.

It was in 1854, when the movement for free homesteads was making headway in Congress, that the Graduation Act was passed, after a full generation of agitation on its behalf. It received no more than half-hearted support from the advocates of homestead, some of them like Galusha Grow voting against it. They were opposed for they feared that graduation would not only delay, but might even defeat, the chances of free homesteads being voted. The Whig *National Intelligencer* could not understand why the House, which had already passed a bill to give land away, should not pass a measure to graduate the price of land. In the past graduation had been defeated by dragging out cession as an alternative and so dividing the elements wishing a change in land policy as to make either impossible to attain.[19] After graduation was shorn of cession, a policy even more detested by the older states, and homestead legislation "was successfully blocked for the time . . . . Graduation was not such a large concession for the conservative eastern interests and one which they could politically afford to grant," especially as they were voting for a policy of classifying land and adjusting its price to the classification as any good businessman would do.[20]

The Graduation Act as finally enacted provided that all public land which had been subject to sale for 10 years—except mineral land held at $1.25 an acre and land reserved for railroads or canals—should be reduced in price in proportion to the length of time it had been on the market. Land that had remained unsold for 10 to 15 years would be priced at $1.00, at 75 cents if unsold for

[17] *S. Ex. Doc.*, 31st Cong., 2d sess., Vol. II, No. 2 (Serial No. 588), p. 14. James W. Silver has a useful note on "Land Speculation Profits in the Chickasaw Cession," in the *Journal of Southern History*, X (February 1944), 84 ff.

[18] *Cong. Globe*, 33d Cong., 1st sess., April 12, 1854, p. 905.

[19] Crandall, *op. cit.*, pp. 3 ff.

[20] *Ibid.*, p. 11.

15–20 years, at 50 cents if unsold for 20–25 years, at 25 cents if unsold for 25–30 years and at 12½ cents (one bit) if unsold for 30 years. The life of the measure was not limited and it seemed to authorize continued repricing of land as it passed each 5-year milestone and remained unsold. The measure differed from earlier versions, however, in that the reductions were to go into effect at once, instead of being gradually introduced. Occupants and settlers could preempt the land on which they were established. If they had been on the land for some time and did not purchase it before it was entitled to a further reduction they could file a declaratory statement and have 11 months in which to make their payments. Each buyer was required to make an affidavit that the land was intended for his own use for actual settlement and cultivation, or for the use of an adjoining farm or plantation owned or occupied by him, and that he had not acquired more than 320 acres under the act.

The 320-acre limitation is an indication of the strength of feeling in the West that the public lands should not be alienated in large tracts to capitalists for speculation. Such limitations appeared in all the preemption legislation and later in the Homestead, Timber Culture, and Timber and Stone Acts, as well as the Graduation Act, but not until 1888–91, except in the South, was Congress prepared to limit land entries in any effective way. The limitation in the Graduation Act was not adequately safeguarded. In fact, the act was so loosely drafted, so certain to be subject to gross abuse unless the officials could enforce the condition that the land acquired under graduation be used for actual settlement and cultivation, that Horace Greeley declared "any shrewd monopolist can drive a coach and six through it."[21] The act contained no reference to the time within which settlement should take place, no regulation requiring proof of settlement, and no eligibility restrictions on entering parties. Though it was designed "to Graduate and Reduce the Price of the Public Lands long on the market to actual Settlers and Cultivators" it was in no way restricted to the landless or to the poorer class.[22] The weaknesses and inadequacies of the act quickly became apparent. The Commissioner of the General Land Office, John Wilson, who had not been friendly to the measure to begin with, declared on November 30, 1854, less than 4 months after its adoption, that it was inherently defective, and had "been productive of much fraud and perjury, and proved seriously injurious to the actual settlers on the public domain."[23]

News of the large amounts of cheap land available spread quickly and there followed one of the greatest land rushes in American history to get the "bit" (12½ cent) land. More than 150,000 people had filed their applications and paid for these lands by 1857 and thousands more did so during the next few years.[24] Hordes of people thronged the land offices even before the officers had received instructions concerning the methods of making entry, the fees to be charged, and the forms to be filled out. The register of the Palmyra, Missouri, office wrote the Commissioner on October 11 that over a thousand persons were waiting to make entries and that applications were being received and filed in order but that the entries could not be completed because the instructions had not arrived. Similarly, the register of the St. Louis office wrote on November 2, 1854, that the crush of people in the office eager to make entries was so severe as to make it almost impossible to do any business. They slept on the stairs to be the first in the morning to be received, broke open the doors, and made such a clamor that he had to announce in the local paper that he could only take a certain number daily and urged many to go home and wait for a more favorable oppor-

[21] *New York Weekly Tribune*, Aug. 8, 1854.

[22] Crandall, *op. cit.*, p. 24; 10 Stat. 574.

[23] *H. Ex. Doc.*, 33d Cong., 2d sess., Vol. I, No. 1, Part 1 (Serial No. 777), p. 81.

[24] *S. Ex. Doc.*, 35th Cong., 1st sess., Vol. II, No. 11, Part 1 (Serial No. 919), p. 97.

STATEMENT IN ANSWER TO THE RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF AUGUST 4, 1854. THIS STATEMENT SHOWS THE NUMBER OF ACRES GRADUATED IN PRICE, AND WHICH WAS SUBJECT TO PRIVATE ENTRY ON THE 4TH OF AUGUST, 1854, UNDER THE ACT OF CONGRESS APPROVED AUGUST 4, 1854, "TO GRADUATE AND REDUCE THE PRICE OF THE PUBLIC LANDS TO ACTUAL SETTLERS AND CULTIVATORS," THE CLASSIFICATION BEING ACCORDING TO THE PROVISIONS OF SAID ACT.

States.	First class, at $1 per acre.	Second class, at 75 cts. per acre.	Third class, at 50 cts. per acre.	Fourth class, at 25 cts. per acre.	Fifth class, at 12½ cts. per acre.	Total in each State.
Ohio					70,495	70,495
Indiana	10,020	56,700	4,200		387,780	458,700
Illinois	112,150	129,040	159,640	100,790	882,990	1,384,610
Wisconsin	796,050	873,688	237,019			1,906,757
Michigan	4,489,640	3,304,430	738,580	21,340	231,900	8,785,890
Iowa	299,840	295,640				595,480
Missouri	2,471,200	2,612,490	1,842,510	455,800	6,468,020	13,850,020
Arkansas	5,941,890	1,233,050	2,256,560	980,100	3,801,010	14,212,610
Louisiana	982,480	4,156,880	876,880	639,720	1,150,380	7,806,340
Mississippi	2,427,103		750,580	391,620	4,032,740	7,602,043
Alabama	966,206	327,530	3,627,791	1,050,857	8,067,118	14,039,502
Florida	269,180	2,664,700	1,047,160	2,845,600	21,920	6,848,560
Total	18,765,759	15,654,148	11,540,920	6,485,827	25,114,353	77,561,007

Source: *House Ex. Doc.*, 34th Cong., 1st sess., Vol. 5, No. 13 (Serial No. 847), p. 470.

tunity to make their applications. One man stood in line 2 weeks at Shawneetown before he could make his entry for 80 acres.[25]

The correspondence of Commissioner Wilson reveals that the scramble for land was participated in by poor men who had squatted on 40- or 80-acre tracts hoping to acquire them at 12½ cents an acre though not certain they could pay even that small sum. There were also substantial farmers wanting to enlarge their well-developed properties, farmer-speculators who were already holding more land than they had the capital to develop, and residents of nearby towns and cities who not only tried to gain 320 acres of graduation land under their own names but hired others to make entries for them. William Brinkley wrote the Commissioner that in southern Illinois thousands of "swindling entries" had been made by speculators who employed a diverse crew to file applications for the cheap land, who furnished the money "to the lowest class of people and to negroes and they make the affidavit and then take transfers for the land . . . ." Minors and married women whose fathers and husbands had also made entries participated in the rush to file for land when the officers, overwhelmed with business, could make no examination of their right to do so.[26]

In the Montgomery, Alabama, district it was brought out that 12,000 acres had been bought by persons "acknowledging that they have evaded the law on the ground that it does not require them to state when they design making settlement under it."[27] In the Elba district, where a large proportion of the public lands was subject to graduation, the rush for land was more than the officers could handle and outsiders arranged to control the flow of applicants, charging each person $10 for their services and putting through minors of both sexes and married women who were apparently filing applications for others. Again Wilson had to declare all such activities contrary to law and instructed the registers and receivers to discontinue the practice and to report all entries of minors and others ordinarily precluded from entering lands.[28]

A well-documented instance of abuse of the graduation law occurred in Indiana. Fifty-seven people were shepherded into the Vincennes land office where each filed application for 320 acres of 12½-cent land located in a nearly solid tract. After the applications had been filed, each applicant was asked by the register if he intended to settle and cultivate the land. All answered affirmatively, the oath was administered, the affidavits presented, and a Dr. Selsam then tendered the payment for all 57 applicants, thereby consummating the business. It was charged later that Selsam paid the expenses of the men while they were in Vincennes and that he was to have half the land and each entryman the other half of his entry. Upon hearing of this flagrant abuse of the act, Commissioner Wilson demanded of the register his explanation for acceptance of the applications. The register declared that he was not aware of Selsam's part in the transaction, but also stated that Selsam had been strongly recommended to him by Senator J. D. Bright. Representative T. A. Hendricks observed that it was not unusual for persons to enter lands under the Graduation Act without having seen them and remarked that he "could not conceive that men could be found so lost to honor and the dictates of conscience, as to swear falsely for 320 acres wild land at 12½ cents per acre." Wilson said that all

[25] William T. Harrison, Register, and Joseph P. Ament, Receiver, Land Office, Palmyra, Mo., Oct. 11, 1854, to John Wilson, File C, Land Office Files; D. C. Tuttle, Register, Land Office, St. Louis, Nov. 2, 1854, to John Wilson, *loc. cit.*; J. A. Elkins, *A Century in Egypt* (1927), p. 27.

[26] William Brinkley, McLeansboro, Hamilton County, Ill., Nov. 3, to the Commissioner, File C; *Valley Farmer*, VI (October 1854), 383.

[27] *Montgomery Advertiser* in *National Intelligencer*, Nov. 2, 1854.

[28] Wilson to Register and Receiver of the Elba Land Office, Oct. 18, 1854, "Charges against Land Officers," Vol. 1, GLO Records; James A. Glendin, Nov. 28, 1854, to Wilson, *loc. cit.*

such assignments were null and void, that the affidavits the men filed were "a mere blind compliance with the letter of the law, without any regard to its spirit," that a gross fraud had been committed and that all participants in the transaction had made themselves liable to prosecution for perjury.[29]

Registers and receivers of the local land offices had little reason to favor restrictions on public land entries or to be unsympathetic to speculators with whom, in numerous instances, they were closely linked. Large entries were much easier to put through than numerous small entries and the income from fees in relation to the time involved was larger. Complaints were received from men, who, while trying to enter tracts as small as 40 acres in crowded land offices, had seen prompt attention paid to the man with several land warrants or a large bankroll. It is not surprising, then, that the register of the Grand Rapids land office in Michigan should state that there were no objections to speculators entering graduation lands, though to be sure they were required to take the required oath of intention to settle and cultivate the land. The oath, however, according to the register, had no binding force, and the entryman need not be troubled about it. There is abundant evidence that efforts to make the weak restriction in the act meaningful did not receive wholehearted support in the local offices.[30]

John Wilson, shocked at the stories of abuses of the Graduation Act flooding into the General Land Office determined to tighten up on the acceptance of entries. In a circular of October 30, 1854, 12 weeks after enactment of the measure he defined the classes of entries that would be accepted: (1) persons who were actual settlers or occupants of the land they intended to enter or who might thereafter become settlers and who were entitled to preemption; (2) persons who desired the land for purposes of immediate settlement and cultivation; (3) and persons already occupying or owning land who wanted to secure adjoining tracts. The first two classes were required to submit proof of settlement before patents would be delivered. However, in the hurly-burly rush of land office business, the local officers, no matter how sincerely they tried to enforce the law, were not in a position to consider all cases coming before them with the care that a court might observe. Cases were reported of the lapse of 2 years between entry and the demand for patent without any settlement. In other instances evidence of some cultivation of the tract was provided but no evidence of occupancy. Some who had filed an entry hired others to make improvements and create some evidence of occupancy and cultivation. Others had made entries for children who were still too young to develop the land, and for their wives, both contrary to the Graduation Act. In May 1855, local officials were instructed to regard 2 months as a reasonable period within which settlement on the land should be begun. A later circular of the Land Office required a sworn declaration of settlement plus corroborative testimony of witness showing among other things that the entryman resided on the land, that he had made no contract or agreement for its sale or transfer, and that he was 21 years of age. In addition a full description of improvements and the number of acres in cultivation was to be presented.[31]

Wilson was no egalitarian land reformer but, since the title of the Graduation Act—"An Act to Graduate and Reduce the Price of the Public Lands to actual Settlers and Cultivators"—implied that it was peculiarly designed for settlers, he was determined to so apply it. His rigorous efforts to prevent nonsettlers from taking advantage of the act brought down upon him a storm of criticism that indicates how effectively his regulations

[29] Letters of P. A. Daumont, Nov. 2; B. M. Thomas, Nov. 6; John C. Heberd, Receiver, Nov. 22; John R. Jones, Register, Nov. 22, 1854 to John Wilson, GLO Files, and copy of letter of John Wilson to A. G. Selman, Nov. 13, 1854, in "Charges against Land Officers," Vol. 1, GLO Files.

[30] Crandall, *op. cit.*, p. 38.

[31] *Ibid.*, pp. 31–32.

were inconveniencing speculators who were trying to buy up large quantities of graduated land. The Land Office was especially criticized for its second major circular which compelled additional proof of residence and improvement after the entrymen had met all the requirements of the first circular. Entrymen were forced to make an extra trip to the local land office at considerable expense and annoyance to comply with these additional requirements and were given the impression that their entries would lapse if the additional proof were not provided.

It was in the South that Wilson's instructions and his rigorous efforts to eliminate fraud in the acquisition of graduation land aroused the greatest resentment. Clement C. Clay, Senator from Alabama, and Stephen Adams and Albert G. Brown, Senators from Mississippi, were most bitter in their denunciation of him and his superior, Robert McClelland, Secretary of the Interior, who had accepted Wilson's judgment in the matter. They called the second instructions arbitrary, tyrannical and altogether a "lawless proceeding" because they were applied retroactively to those who had conformed to all the requirements of the first instructions. Even Lyman Trumbull, Senator from Illinois, became upset at the complaints coming to him about Wilson's "arbitrary" actions. At the same time John Wentworth and Stephen A. Douglas were expressing their dissatisfaction with the agents who were ferreting out and prosecuting cases of timber stealing in the pineries of Wisconsin and Michigan.[32]

Whether it was the uproar created by Wilson's determination to prevent abuse of the Graduation Act, the efforts of the Land Office to reduce timber stealing on government land in the pinery states, the Commissioner's "Whiggish and Know-Nothing" principles, as one historian has suggested, or a combination of all three factors that led to his downfall is not clear. The evidence seems to suggest that Wilson had offended too many private interests in trying to protect public interests and that his political tendencies were used solely as a pretext to justify his removal.[33] The dismissal of Wilson, who was an able and honest man serving in a weak administration, and his replacement by Thomas A. Hendricks, a more adaptable politician who was acceptable to the larger economic interests of the West, took some of the heat off the Department of the Interior.[34]

Although Hendricks and his superior, Robert McClelland, continued to show concern about the amount of fraud and perjury being committed under the Graduation Act, they directed critics of that measure to Congress. McClelland in his *Annual Report* for 1856 spoke of the "looseness" with which the Graduation Act was drafted, the "want of proper guards to protect its principles," the "many fraudulent entries" under it; he repeated and slightly strengthened Hendrick's statement of the previous year that care would

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[32] D. P. Roberts, Kaskaskia, Ill., April 6, 1856, and Amos C. Babcock, Canton, Ill., April 16, 1856, to Trumbull, and W. H. Sweet, Saginaw City, Mich., April 22, 1856, to William H. Seward, all in Trumbull Papers, Vol. 3, in Library of Congress. Also, "Protest of the Michigan Settlers, 1854. The Graduation Lands Acquired by Settlers under the Graduation Act of 1854: a Review of Secretary McClelland's Circular. By a Citizen of Central Michigan."

[33] Jenks Cameron, *The Development of Governmental Forest Control in the United States* (Baltimore, 1928), p. 151, *passim;* Roy Franklin Nichols, *Franklin Pierce. Young Hickory of the Granite Hills* (Philadelphia, 1958), p. 391.

[34] The difference between Wilson's adamant position that proof of occupancy and improvements on land must be provided before patent might issue and Hendricks' attitude may be seen in the following statement by Hendricks to McClelland, of Sept. 22, 1855. In reply to an inquiry whether failure to occupy the land more than a year after it was entered would prevent the issue of the patent, Hendricks declared that where the failure to settle upon the land was proved the patent would not issue but where no fraud was proved it would automatically be delivered. To prove fraud, which existed so widely, required much time and attention by the land officers; if not pressed by their superiors to investigate every case, it was easy for them to let matters slide.

be taken to prevent the making of entries not intended for occupancy and improvement. But he seemed to invite Congress to sanction all entries thus far made, regardless of whether there had been "compliance with the spirit and intention of the law" or not.[35]

A dispatch in the *Keokuk Post* (Keokuk, Iowa) of 1859, indicates that abuses of the law continued. It mentions the great number of "sharks" at the St. Louis and other land offices who had been entering or getting others to enter graduation lands for them, especially the "bit" land, which they then sold in a few weeks' time at $1 to $15 an acre. The *Post* complained that these sharks swore they wanted the land for actual settlement, then hired "worthless scoundrels" to enter it who conveyed it to them for a small payment.[36] Thus were perfected many of the devices which land grabbers were to employ even more extensively at a later period to secure homestead and preemption lands.

The efforts of the Land Office to prevent speculators and other nondevelopers from accumulating large ownerships by abusing the Graduation Act gave rise to many thousands of contested cases in much the same way as the preemption laws had done earlier. The following items illustrate the principal types of cases.[37]

One person filed application for a tract on which there was an existing settlement.

An entry was made for the use of an adjoining farm but the addition did not make a compact unit or there was no adjoining farm and the entry was fraudulent.

The entry was made for the use of an adjoining farm but all land adjoining was wild and unoccupied.

After making the entry for actual settlement and cultivation the party sold the land at an advanced price before any settlement had been made.

Entries were made by minors.

Assignment of the land was made either before or immediately after the patent was issued.

By 1857 Senator Albert G. Brown was complaining that more than a hundred thousand people, whom he pictured as hard working, honest but poor, were being denied ownership of the land they were entitled to by the arbitrary action of the Land Office. Other evidence in the files of the Land Office and many other accounts of the time reveal that the vocal part of the "hundred thousand" had much more than 320 acres at stake. An easy solution seemed to be congressional action to validate all graduation entries, whether or not they conformed to the instructions the Department had drafted. A move in that direction was made in 1856 but was checkmated by the Senate Committee on Public Lands. In an attempt to by-pass that committee, which was controlled by Charles E. Stuart of Michigan and George E. Pugh of Ohio, three southern Senators proposed referring to the Senate Committee on Private Land Claims a House bill to validate all graduation entries. This committee was headed by Judah P. Benjamin of Louisiana, who was extraordinarily generous in recommending the confirmation of land claims in the South, and who, with two others, controlled the committee. The proposal to take the matter out of the hands of the Committee on Public Lands greatly angered Stuart and Pugh, who were on the defensive because they had not acted more promptly. Stuart accused Brown of making a stump speech for home consumption, declared that some of Brown's "hundred thousand" poor settlers were actually speculators who had hired others to make false affidavits and who were now trying

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[35] Thomas A. Hendricks, Sept. 28, 1855, to R. McClelland, Secretary's Files, Department of the Interior; *S. Ex. Doc.*, 34th Cong., 3d sess., Nov. 29, 1856, Vol. II, No. 5, Part 1 (Serial No. 875), p. 175.

[36] *Keokuk Post*, quoted in the *Vermilion County Press* (Danville, Ill.), March 23, 1859.

[37] *S. Ex. Doc.*, 34th Cong., 1st sess., Vol. I, No. 1 (Serial No. 810), Part 1, p. 147.

to sell the land they had entered at 12½ cents for $5 and $10 to others.[38] The upshot of it all was that Stuart and Pugh agreed to report a measure to the House within a few days. This they did, with safeguarding amendments, but essentially the southerners had their way. "The Act to confirm certain entries" was introduced and passed in the House on February 2; the Senate Committee reported it on the 5th; it was promptly passed without a division, and became law on March 3.[39]

Before the measure was finally adopted, Burton Craige of North Carolina moved to amend the title to have it read: "An act for the purpose of enabling persons to hold land without complying with the requirements of the original act." The motion was met with laughter and it was ruled out of order but there was much to it, for the act did try to accomplish just that. It validated all entries under the Graduation Act if the purchaser had complied with the first set of instructions by filing the required affidavit and paying the purchase money, and directed that the patents should be issued forthwith. Such entries as the Commissioner had found to be "fraudulently or evasively made" and entries which had previously been annulled and vacated by the Commissioner because of fraud or evasion of the law were excepted. This act enabled many thousands of acres to be patented which had not been occupied and improved and for which relatively meaningless affidavits had been filed.[40]

The act was retrospective only and soon thousands of additional entries were in the same situation, i.e., suspended because the entrymen had not conformed to all the requirements set by the Land Office. Commissioner Hendricks in his *Annual Report* of 1858 reiterated that a very considerable proportion, if not the greater part, of the graduation entries "have been made by unscrupulous individuals in contravention of the law, and bought up by speculators, who are relying on Congress for the confirmation of their entries, by the passage of an act similar to the Act of March 3, 1857, dispensing with the proof of settlement and cultivation." He posed two alternatives to Congress: either to free the Graduation Act of the "odium of evasion and fraud" by amending it so as to require positive proof of settlement and cultivation before the patent should issue, as Wilson had attempted to do by his second set of instructions, or else to abandon the requirement of settlement and cultivation altogether.[41]

The nonslaveholding states of the Mississippi Valley had not been much concerned about graduation because they were anxious for free land and nothing short of that would satisfy them. No northern state but Michigan had any great amount of land affected by the Graduation Act and no lands in the territories had been proclaimed for as long as the 10 years that would bring them within the scope of the law. The greater part of the eligible land in these states was snapped up quickly and another part that would have been eligible was withdrawn from entry under graduation either because it was reserved for land grants to railroads or was to be sold at the double-minimum price if within the 6-mile limit of these grants. The land grants and withdrawals greatly reduced whatever acreage would have been available under graduation and disappointed many potential land buyers in the North who now found that, instead of graduation prices, they would have to pay the double-minimum, $2.50, for public land and as much as $6 to $15 an acre for railroad land.

[38] *Cong. Globe*, 34th Cong., 3d sess., Feb. 2, 1857, pp. 552–55.

[39] *Cong. Globe*, 34th Cong., 3d sess., Feb. 25, 1857, pp. 538, 551–54, 579.

[40] *Cong. Globe*, 34th Cong., 3d sess., Feb. 2, 1857, p. 538, 11 Stat. 186.

[41] *H. Ex. Doc.*, 35th Cong., 2d sess., Vol. II, No. 2 (Serial No. 997), Nov. 30, 1858, p. 123.

ACREAGE LISTED BY THE LAND OFFICE AS AVAILABLE UNDER GRADUATION AND THE AMOUNT ACTUALLY ENTERED[a]

State	Acreage Listed as Available Under Graduation	Acreage Entered Under Graduation	Percent Sold
Ohio	70,495	69,294	98
Indiana	458,700	371,123	81
Illinois	1,384,610	938,285	67
Michigan	8,785,890	1,036,227	11
Wisconsin	1,906,757	886,907	46
Iowa	595,480	130,314	22

[a] The report showing the acreage open to graduation is dated December 24, 1855. Lands within the exterior limit of the railroad land grants in Illinois, Missouri, and Mississippi are not included. It should be remembered, however, that the larger part of the grants of the fifties were made in 1856, and of course had not been withdrawn from entry at the time the report was prepared. *House Ex. Doc.*, 34th Cong., 1st sess., Vol. 5, No. 13 (Serial No. 847) *passim.*

Practically all land available for graduation in Ohio, Indiana, Illinois, and Iowa which had not been reserved for railroads was actually sold during the years 1854 to 1862. By the latter year only fragments of land, if any, were left and all the land offices in the first three states had been consolidated into one office retained for record purposes, while in Iowa the eastern land offices had been closed.

Even in the six public land states in which slavery flourished graduation did not sweep all the remaining public lands into private ownership. Large acreages remained, seemingly unwanted at any price. A considerable part of this unwanted land was not to attract interest until the 1880's when long leaf pine and cyprus timber drew northern buyers.[42]

GRADUATION ENTRIES AND LAND REMAINING UNSOLD IN 1862[a]

States	Acreage Listed As Available Under Graduation	Acreage Entered Under Graduation	Percentage of Land Entered	Acreage Remaining Unsold
Missouri	13,850,020	8,897,714	64	4,700,000
Arkansas	14,212,610	3,891,405	27	11,757,662
Louisiana	7,806,340	1,486,004	19	5,582,841
Mississippi	7,602,043	1,826,392	24	4,930,893
Alabama	14,039,502	5,543,127	39	6,915,081
Florida	6,848,560	599,536	8	17,540,374

[a] The acreage available under graduation, which is not necessarily all the remaining public lands in the states, is from *H. Ex. Doc.*, 34th Cong., 1st sess., Feb. 5, 1856, Vol. V, No. 13, *passim;* the acreage entered under graduation is compiled from the *Annual Reports of the Commissioner of the General Land Office;* the percentage has been calculated; the acreage remaining unsold from the *Report of the Commissioner of the General Land Office, 1867,* p. 367. The acreage remaining unsold is not the result of deducting column two from column one. It does not altogether check out with other data. For example, the acreage remaining unsold for Missouri is given as 1,835,892, as of 1867. This is an error, for final homesteads to the amount of 3,644,306 acres, and cash sales and scrip and warrant entries after 1867 came to more than 1,100,000. There were, therefore, at least 4,754,000 acres remaining unsold and unappropriated in Missouri on June 30, 1867.

[42] Paul W. Gates, "Federal Land Policy in the South, 1866–1888," *Journal of Southern History,* VI (August 1940), 303–30.

It would be interesting to speculate whether the institution of slavery and the plantation system, with its tendency to absorb the best lands, was responsible for discouraging small farmers from taking up the less attractive lands, as small farmers were doing before the Civil War in Indiana and Illinois. Alabama and Mississippi were being settled at the same time as Indiana and Illinois but the two northern states quickly surpassed the two southern ones in population, number of farms, improved acreage in farms, and value of farm implements; the cash values of the farms in these northern states was nearly twice that of those in the South. Similarly, Iowa was far ahead of Arkansas. Perhaps what impelled Benton to favor graduation was his realization that in a slave economy $1.25 an acre was high and that only by reducing the price drastically would the long unsold southern land pass into private ownership and be made into farms. It was in the decade of the fifties that the greatest increase in land in farms occurred in the six slave states. The increase came largely from lands bought at graduation prices. This was not true of northern states where only 4,432,150 acres were sold at these prices in contrast to 22,244,178 sold in the South.[43]

Whatever the motive of Benton, Cobb, Hubbard, and Walker in urging the adoption of graduation, it seems very obvious that they were right in concluding that if the price of land was lowered in proportion to the length of time it had been subject to sale, there would be a big demand for such as had any value for farming. As the accompanying table shows, the lower the price the larger the proportion of land available at that price was taken.

ACREAGE IN FARMS

Six Slave States	1850	1860
Missouri	9,732,670	19,984,810
Arkansas	2,598,214	9,573,706
Louisiana	4,989,043	9,298,576
Alabama	12,137,681	19,104,545
Mississippi	10,490,419	15,839,684
Florida	1,595,289	2,920,228
Total	41,543,316	75,721,549
Six Free States		
Ohio	17,997,493	20,472,141
Indiana	12,793,422	16,388,292
Illinois	12,037,412	20,911,989
Michigan	4,383,890	7,030,834
Wisconsin	2,976,658	7,893,587
Iowa	2,736,071	10,069,907
Total	52,924,946	82,766,710

Through graduation and the issuance of military bounty land warrants, the greater part of the land sold or entered in the fifties was acquired at substantially less than the $1.25 price which had prevailed since 1820. In fact, only 22 percent of the land entries of 1855 to 1862 went for the regular minimum price. To this extent Benton and other exponents of a low pricing policy had won their objective. The graduation business took up much of the time of the local officers and provided an additional method by which local men of capital could acquire Federal lands cheaply. Outside capitalists with large funds to invest in land at this time had little reason to resort to fraud under the Graduation Act. They wanted first choice, not second or third choice, if they were well advised, and that meant buying newly offered land which could be acquired in unlimited amounts. It was the lands restored to market in Illinois and Missouri after the railroads had made their selections and even more the newly of-

[43] That the sale of graduation lands provided the larger part of the increased land in farms in the slave states can best be seen in Alabama where the acreage in farms increased 6,966,000 acres; the acreage of public land sales (of which 86 percent were graduation sales) was 6,400,330 for the decade. In the other five slave states with public lands the donation of swamplands complicates the story somewhat, but all evidence supports the conclusion that graduation sales were the most important factor in making possible expansion of the land in farms.

PROPORTIONS OF LAND AVAILABLE AT GRADUATION PRICES THAT WERE SOLD[a]

Price	Amount Available	Amount Sold	Percentage of Amount Available	Percentage of Total Graduation Sales
$.12½	25,114,353	14,035,444	55.8	54
.25	6,485,827	3,623,669	55.6	14
.50	11,540,920	3,450,058	30	13.5
.75	15,654,148	2,946,244	18	11.5
1.00	18,765,759	1,564,441	8	6

[a] Crandall, *op. cit.*, p. 87.

fered lands in Wisconsin, Iowa, and Minnesota Territory that attracted such investors. In these areas the bulk of the sales at $1.25 an acre were made. In the three big years—1854, 1855, and 1856—Iowa alone provided 35, 51, and 24 percent of the sales at $1.25; Wisconsin 10, 19, and 22 percent, and Minnesota 19 percent in 1857.

Period of Accelerated Disposal

The period of 1847 to 1861 was one of great activity in the disposal of public land as the table on page 277 in the chapter on military bounty lands shows. Not only did cash and warrant entries reach high figures but, in 1850, Congress began donating land to aid in the building of railroads. The same year it turned over to the states swamplands which they were permitted to do with as they wished, though the grant was intended to aid them in building levees and in draining wet land. When finally selected, the swamplands amounted to 63,931,000 acres. By 1861 an estimated 50 million of them had passed into private hands.[44] The total of swamplands disposed of, lands sold at $1.25 and at graduation prices, and lands entered with military warrants during the years 1851 to 1860 may be estimated at about 144 million acres. In this same period the acreage of land in farms in the public land states increased from 98,214,000 acres to 153,893,000 acres, or roughly an expansion of 55 million acres. Some of the privately owned land not recorded as in farms by 1860 was doubtless being improved but had not yet attained the status of a farm from the viewpoint of the census taker. Probably the greater part of the land not in farms, 40 million to 45 million acres, was held by speculators.

Although the Land Office Commissioners were sure that the larger part of the land going to patent through graduation sales had been acquired by persons not planning to develop them, we cannot examine the degree to which their opinion is correct without making minute studies of the county deeds. But for the sales at $1.25 an acre and the acquisitions with military warrants we need make no such investigation—it was not necessary for the speculators to work through dummy entrymen, and their purchases were out in the open.

In 1849, before graduation had been enacted, Thomas Ewing, Secretary of the Interior, former Senator from Ohio, and himself a large investor in public lands, included in his annual report a fatuous statement concerning the distribution of the public lands; it suggests either that he knew little of public land administration or hoped to play

[44] This estimate is based on the analysis of the Illinois swampland disposal of Margaret Beattie Bogue in *Patterns From The Sod. Land Use and Tenure in the Grand Prairie, 1850–1900* (Springfield, Ill., 1959); and my own research in the records of swampland disposal of the States of Indiana, Louisiana, and California at Indianapolis, Baton Rouge, and Sacramento; and in the records of the Illinois Central Railroad. None of the other railroads, except possibly the Hannibal & St. Joseph, was able to dispose of a part of their lands so advantageously in the fifties as did the Illinois Central.

down any demand for change by suggesting the laws were working well. He declared that the land system "has been, thus far, effectual; and will, while it is preserved, be effectual in preventing alike large monopolies of land, and speculations injurious to those who purchase for cultivation." The capitalist could not buy up the public domain as long as prices were kept down. "Hence, land is now seldom purchased on speculation, and even those who hold the bounty-land warrants for sale do not find it profitable to locate them, for they are not thereby enhanced in value." The warrants, he thought, added little to the annual sales of public lands.[45] According to the table of entries with cash and warrants (App. B), entries of land did substantially increase when warrants became available; and a look at the Iowa and Wisconsin entry volumes would have shown the Secretary that speculation was rapidly recovering from the doldrums into which it had fallen after the Panic of 1837.

Elsewhere lists have been compiled showing some of the larger investors who acquired public land in the prairie states in amounts from a thousand to 200,000 and 300,000 acres.[46] If these investors were local men of affairs purchasing with the idea of developing their holdings, as Isaac Funk and Matthew T. Scott did in central Illinois, or as Henry L. Ellsworth tried to do in the prairie section south of the Kankakee River in Indiana, they were looked upon as performing a useful service to the community. But if they were solely interested in holding for the rise, as Romulus Riggs did in the Military Tract of Illinois, they were excoriated by the local people, nothing removable was safe on their property, and their taxes were sometimes made heavier than usual. It was against the absentee-nondeveloping owner that the West directed its opposition and it was the purchases of these men that drove the West to advocate measures to prevent the purchase of land in other than small lots.

One incomplete but systematic tabulation of large land acquisitions in Illinois lists 59 acquisitions of 2,000 to 5,000 acres; 43 acquisitions of 5,000 to 10,000 acres; 15 acquisitions of 20,000 to 40,000 acres; four acquisitions of 40,000 to 60,000 acres; three acquisitions of 60,000 to 100,000 acres; and one in excess of 100,000 acres. Over 2 million acres, or 6 percent of the acreage of Illinois, was engrossed by holders of 5,000 acres or more. It is important to note that, with some exceptions, these large ownerships were in the better parts of Illinois. Speculators, estate builders, and bonanza farm developers did well, on the whole, in their selection of land.

In Indiana the story is somewhat the same: 234 individuals entered 1,000 acres or more. Their holdings totaled 1,237,000 acres. Among them were 64 holdings of 2,000 to 5,000 acres; 19 holdings of 5,000 to 10,000 acres; 10 holdings of 10,000 to 20,000 acres; five holdings of 20,000 to 40,000 acres; and one holding of 90,000 acres. Both the Illinois and Indiana tabulations include some purchases in each of the three eras of large speculative purchasing: 1816–18, 1833–37, and 1850–57.

The heyday of the bonanza farmer in the prairies of Indiana and Illinois was in the sixties and seventies, when the demand for land to be rented and worked by incoming immigrants was so constant that these landlords could develop their land with hired labor or tenants. These great bonanza farms—in Indiana they were as large as 40,000 and 45,000 acres—rivaled in size of

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[45] *H. Ex. Doc.*, 31st Cong., 1st sess., Vol. III, No. 5, Part 2 (Serial No. 570), pp. 6–7.

[46] Mary Elizabeth Young, *Redskins, Ruffleshirts and Rednecks*, pp. 131–32, 165–66; Paul W. Gates, "Land Policy and Tenancy in the Prairie States," *Journal of Economic History*, I (May 1941), pp. 68, 69, 71; *id.*, "Land Policy and Tenancy in the Prairie Counties of Indiana," *Indiana Magazine of History*, XXXV (March 1939), 17; *id.*, "Hoosier Cattle Kings," *Indiana Magazine of History*, XLIV (March 1948), 3–4; *id.*, *Wisconsin Pine Lands of Cornell University* (Ithaca, 1943), pp. 66–67; James W. Silver, "Land Speculation Profits in the Chickasaw Cession," *Journal of Southern History*, X (February 1946), 88, 90; Bogue, *Patterns From the Sod*, pp. 259–60.

operations and value anything in existence in the plantation South before the Civil War and were only equalled or exceeded at a later time by the huge grain farms in the Red River Valley of the Dakotas and in California. The owners of some of these estates have shown remarkable tenacity in retaining their rich lands, which were first developed as cattle ranches. For years the Chicago market was supplied with their fat stock and many of their huge bullocks were shipped live weight to the English market.[47]

Prairie soils of Indiana and Illinois were too productive and became too highly valued to be used long for cattle ranches. By the fifties they were being rented to tenants and tenancy was well under way years before the Census Bureau began to collect information concerning its extent. The multiple ownerships of tenant farms of a number of score of landlords in Indiana and Illinois whose family holdings dated from the thirties and fifties of the 19th century are impossible to isolate in the Census reports but it is known that one landlord had at least 280 tenants in Illinois alone by 1880, in addition to a larger number in Kansas and Nebraska, and dozens of others had smaller numbers of tenants. In both states the tendency to break up the very large farms of 5,000 to 45,000 acres into tenant units did not prevent the establishment and increase in the number of farms that in the East would have been regarded as very large. For example in Illinois in 1860 and 1870 there were, respectively, 194 and 302 farms with improved acreage over 1,000 acres. If allowed the usual amount of unimproved land that was perhaps used for pasture, they would range upward from 1,370 acres. In 1880 there were 649 farms containing 1,000 acres of both improved and unimproved land. In that same year Illinois had 3,249 farms of 500 to 1,000 acres of improved and unimproved land. The number of farms of 500 acres and more were only 1.5 percent of the total, but the percentage of acreage in farms would be much larger. Again the Census fails for it provides no such data.

It took shrewd and able management, given personally either by the resident owner or by his representatives, to transform raw prairie estates into productive rent-paying farms or owner-operated farms of 500 acres and more. Many more of the large buyers of the years before the Civil War either were forced to unload their large holdings to meet their costs or preferred to sell rather than to carry their investment indefinitely.

The first land office in Iowa was opened in 1838. There was a small flurry of purchasing during the next 3 years but Iowa did not become the first objective of land speculators until the 1850's, when it was apparent that the most favored route for a transcontinental railroad was that by way of South Pass—which meant across Iowa. It had also been known that Iowa prairie lands were among the best in the country.

Then began the rush of land buyers to obtain an investment in the state having the least waste and the largest proportion of excellent land of all states. Capital flowed into Iowa in great quantities. In every land office town agents were prepared to enter land for absentee investors, to manage their sales, leases, and collections, and to pay their taxes. During this period of booming land sales, warrant entries, and talk about railroads, more public land passed into private ownership in Iowa than in any other state. Among the buyers were 101 individuals or partnerships who bought 2,786,000 acres—7.8 percent of the acreage of the state—in amounts of 5,000 acres or more. Six of these purchases were for more than 100,000 acres, one was for 178,000 acres, one for 190,000 acres, and one for 250,000 acres. Four other large acquisitions averaged 83,000 acres. In one tract of 2,500,000 acres in nine counties of central Iowa, 31.7 percent or 792,796 acres were ac-

[47] Gates, "Hoosier Cattle Kings," pp. i ff.; and *id.*, "Cattle Kings in the Prairies," *Mississippi Valley Historical Review*, XXXV (December 1948), 379 ff.; *id.*, *Frontier Landlords and Pioneer Tenants* (Ithaca, N. Y., 1945), *passim.*

quired in amounts of 1,000 acres or more. One student concluded that between one-half and two-thirds of the land of Iowa went through the hands of speculators.[48]

The Census of 1860 listed only 10,069,907 acres in farms in Iowa, though there was undoubtedly much more improved land that the census takers missed. If we add to this figure the 4,706,874 acres, as yet largely unsold, which were given to railroads, the 3,019,685 acres given the state, and the nearly 2 million acres of public land remaining unsold, there still is a balance of 15,778,574 acres unaccounted for, which were to a very considerable degree held for speculation. If one were to apply the proportion of speculator-owned land (1,000 acres or more) that Swierenga found in the Sac and Fox tract to the entire state, the amount would be 11,277,252 acres. On the other hand, Swierenga shows a relatively rapid turnover of speculator-owned land, a very considerable amount having been sold by 1860. In *Description of Iowa and its Resources*, a pamphlet to draw immigration to Iowa in 1865, William D. Wilson wrote that not less than 15 million acres or two-fifths of the state, were held by nonresidents.[49]

The largest purchasers of Iowa lands were either easterners actually lending settlers funds or military bounty warrants to enter lands on the usual frontier terms of 24, 36, and 48 percent interest, or they were western agents or "bankers" using eastern funds for the same purpose. Oddly enough, it was a southern group whose purchases and loans reached the highest figure. Easley & Willingham and Easley, Holt & Company were mercantile firms owning a system of stores scattered through different sections of Halifax County, Virginia. Their total entries of land in the West, made largely for settlers, amounted to 401,752 acres of which 328,000 acres were scattered over 51 counties in Iowa. James S. Easley described his method of lending money for the purchase of land: he would enter a quarter-section of land for a settler using land warrants that cost him from 90 cents to $1.10 an acre, and require that the settler pay $280 at the end of a year plus all land office fees. For 120-acre entries the payment was to be $210 and for 80 acres, $140. Easley allowed local agents, who rounded up settlers willing and anxious to have their claims entered for them, $5 to $10 for their services. He and his associates entered land for more than 2,000 settlers. Many of these entries were for people who had filed their declaratory statements and were looking forward to preempting their claims but had to call on Easley & Willingham for aid. In such cases the entry was marked on the books of the registers and receivers as "sub to preempt of. . . ."[50]

Another team of capitalists who made extensive loans to settlers were Miles and Elias White of Elizabeth City, North Carolina, and after 1849, of Baltimore, where Miles White was president of the Peoples Bank. Their total purchases of public land came to 165,483 acres, of which 146,000 were in Iowa. In addition they took over purchases of 24,000 acres made by others. In 1854 they were entering land for settlers who were re-

[48] Robert P. Swierenga, "Pioneers and Profits. Land Speculation in the Iowa Frontier" (Ph.D. dissertation, Iowa State University, 1965), drew heavily on data prepared as part of a suit brought by the Sac and Fox Indians to recover from the United States a higher consideration for the land than they had received in 1842. He concludes that between one-half and two-thirds of Iowa land went through the hands of speculators. Swierenga has a useful article compressed from the dissertation: "Land Speculator 'Profits' Reconsidered: Central Iowa as a Test Case," *Journal of Economic History*, XXVI (March 1966), 1 ff. Manuscript records of land speculators show that some suffered heavy losses but no one truly familiar with the land business ever believed that investment in "good" land at government prices, if carefully managed with capital to carry the investment until conditions warranted sale, was not profitable.

[49] Swierenga, "Pioneers and Profits," p. 71.

[50] In the library of the University of Virginia is an extensive collection of letters and business records detailing the land business of Easley and Willingham and others associated with them.

quired to sign notes for $270 for 160-acre tracts; $210 for 120-acre tracts; $138 to $140 for 80-acre tracts; and $68 to $70 for 40-acre tracts. By 1856 they were demanding $280, $140, or $70. In the more prosperous years of the fifties the turnover of capital was rapid; some settlers offered to pay before the year was up and were allowed 10 or sometimes 5 percent discount. (The Whites were Quakers and when fellow members of their religion objected to their making land entries with military bounty warrants, they ceased entering land for settlers.) Most settlers met their payments promptly until 1857. Some were delayed a few days or months, and others did not complete payments for as long as 2 years. After 1857 conditions changed and payments were delayed longer.

The third of the agencies that made many loans to Iowa settlers was Cook & Sargent, a Davenport banking and exchange firm, much of whose capital was supplied by Boston people. It maintained branches in every land office town in Iowa and another at Florence, Nebraska. The firm kept its $300,000 of notes in circulation by issuing them in Boston and Florence and redeeming them in Davenport, with other notes redeemable in Florence. In other words, it was kiting its circulation, which was not uncommon at the time. It is not easy to separate the various operations of the different partnerships, for Cook & Sargent had a third partner in each land office town, the best known being Hugh D. Downey of Iowa City. The two Sargents, two Cooks, and Downey entered altogether 178,000 acres, some doubtless for speculation but the larger part for settlers on terms similar to those of the Whites and Easley. The over-extended credit of Cook & Sargent reached a breaking point in 1859 and the partnership was forced into bankruptcy.[51]

Few investors in Iowa, or for that matter in Wisconsin, Illinois, Arkansas, or Alabama, seem to have had any fear that the prosperity of the 1850's would end abruptly. Large and small investors purchased to the limit of their resources, expecting that they would be able to turn over their investments quickly, as they had in 1854 and 1855. But the sustained period of prosperity was broken by the failure of the Ohio Life Insurance and Trust Company on August 24, 1857. This was followed by a swift contraction of bank loans, suspension of specie payments by most banks, and the failure of numerous banks, railroads, and industrial companies.

Some recovery set in before long but in 1860 the withdrawal of the South from the Union, the suspension of payments on its bonds, and the cessation of trade between the two sections brought the economy of the country to a near halt. Immigration declined sharply, the westward movement slowed down, agricultural prices dropped, and the demand for land, so active only a little earlier, fell off sharply. Land speculators and capitalists carrying the land debts of settlers could neither make sales nor collect outstanding obligations. Two years later William H. Willingham said that he and James Easley were "land loaded, and it takes all the means we can raise to pay taxes. . . ." An Easley & Willingham agent reported on May 4, 1860, that no immigrants of consequence were coming in, that many of the actual residents were anxious to sell a part of their land, that there was no demand for land, and no money available. Land speculation in Iowa had outrun all reason and was suffering a reaction from which it would not recover for 3 or 4 years.[52]

Easley & Willingham during the Civil War could not pay taxes on their western lands and consequently the titles became clouded

[51] Milo M. Quaife (ed.), *The Early Days of Rock Island and Davenport. The Narratives of J. W. Spencer and J. M. D. Burrows* (Chicago, 1942), pp. 241 ff.

[52] Easley & Willingham, Sept. 1, 1858, to Bennett & Maxon (copy); William H. Willingham, Aug. 20, 1860, to H. D. Downey (copy); and Thos. Mercer, May 4, 1860, to Easley, Easley & Willingham Papers, University of Virginia Library.

by delinquency and tax sales. After the War the firm tried to salvage from the demoralized state of its business those lands worth recovering, but it found the task long, tiresome, and costly. Its records show that its Iowa holdings of 88,555 acres were scattered over 51 counties; its 37,920 acres of Missouri land over 11 counties; and 3,400 acres of Kansas land over six counties. Six years later the firm's Iowa lands were down to somewhere between 20,000 and 30,000 acres, its Missouri lands to 20,000 acres.[53]

Miles and Elias White were similarly caught with a heavy investment in land from which they could obtain very little income during the years 1857–62. One agent alone wrote on November 12, 1860, that he was sending 58 deeds for forfeited sales. Having moved from the South to Baltimore, White's titles did not become as involved as did those of Easley & Willingham, but it was to take years before they could recover their investment from sales.[54]

The time entry business—the western term for entering land for settlers—left millions of acres in the Upper Mississippi Valley states in the possession of capitalists. These men had to carry their lands for years before they could recover their investments. As the carrying costs were rapidly mounting, immigrants who could not raise the capital to buy these lands were induced to rent them. Tenancy thus made an early appearance. In other instances the higher price that the capitalist exacted for his land contributed to heavier mortgage indebtedness and tenancy.

Not only was the choice agricultural land of the prairie states being rapidly disposed of in the fifties; mineral bearing land in Upper Michigan, especially in the Keweenaw Peninsula, also attracted buyers. Congress had provided for the creation of the Lake Superior land district with headquarters at Sault Sainte Marie, in an Act of March 1, 1847, and had ordered a geological survey to be made for the purpose of classifying the mineral and nonmineral land. Persons who were occupying mineral land for the purpose of mining it and had complied with requirements concerning registration were permitted to buy their claims up to a section at $2.50 an acre. Other mineral land was to be offered at $5 an acre. Jurisdiction over the mineral lands was transferred from the War Department to the Treasury Department. Nonmineral land was to be offered as elsewhere at public auction and thereafter to be available at private entry for $1.25 an acre.[55] The North-West Mining, Pittsburgh & Boston Mining, Lac La Belle Mining, Minnesota Mining, North American Mining, Siskowiet Mining, Phelps Dodge Companies, and six other groups and individuals acquired 110,000 acres. Of this acreage 3,137 was sold at $5 per acre, 9,330 at $2.50, and the balance at $1.25 an acre.

Meantime, the pineries of the Lake States were likewise coming into keen demand for the choice white pine timber wanted by builders. The demand was local until settlers began moving onto the prairies of Indiana, Illinois, and Iowa. The scarcity of timber in these states forced both town promoters and farmers to import their lumber from the distant pineries of Michigan, Wisconsin, and, later in the fifties, from Minnesota Territory.

Some of the new groups buying timberland were Maine lumbermen who, fearing the early exhaustion of the timber resources of the Pine Tree State, were transferring their wealth and know-how to the richer pineries of Michigan and Wisconsin and to rising new lumber towns such as Saginaw City, Traverse City, and Manistee in Michigan, and Green Bay, Menasha, Wausau, Eau Claire, and Chippewa Falls in Wisconsin.

[53] These are estimates based on an examination of the books and papers of the Easley & Willingham Papers.

[54] Edward A. Temple, Nov. 12, 1860, to Miles White, White MSS.

[55] 9 Stat. 146–47.

In these communities they set up their big new mills. Others were buying timber for speculation, reasoning that with the great influx of settlers into the prairies the demand for timber would soon bring even the more remote pinelands into keen demand. Prominent among the lumbermen who acquired land in Michigan in the late forties and fifties were Edmund, John, and Roswell Canfield (10,014 acres), John Burt, William Sanborn, and Heman Jones (19,530 acres). Samuel F. Hersey of Bangor, Maine, started his purchases in Michigan in 1854 with 10,000 acres and then moved on to the St. Croix Valley of Wisconsin and Minnesota, where he joined with Isaac Staples, another Maine lumberman, in building a big mill at Stillwater; he was said to have invested with his partner $300,000 "in our midst."[56]

In Wisconsin such well-known leaders in the lumber trade as Abner Coburn, Henry Hewitt, Jr., Isaac Staples, and Samuel A. Jewett were actively entering pineland either for their mills or as a speculation. The firm of Cadwallader Washburn and Cyrus Woodman illustrates the zeal with which those interested in stumpage were pushing their acquisitions. Washburn began his purchases in 1847 at the Mineral Point office in southwestern Wisconsin where by 1854 he had bought 30,480 acres. By 1853 he had entered 7,890 acres in the Willow River and LaCrosse districts. His partner Woodman obtained 41,000 acres in the Mineral Point district, 32,916 acres in the LaCrosse district, 5,835 acres in the Hudson district, 13,000 acres in the Stevens Point district, and 9,000 acres in Minnesota. After the Civil War both men added to their possessions so that their total entries came to 159,000 acres. In addition they invested in and cared for 21,000 acres for other members of their families.

Minnesota was first opened to sale and settlement in 1849. By 1854 government land sales were booming. Warner Lewis, surveyor general for the district, warned that the unexampled rapidity with which Iowa and Minnesota were being settled was creating a demand for timber and that depredations on public land were becoming common. He urged that the lands be offered at sale as soon as possible—a view not at all supported by the settlers, who were hopeful that a homestead law would be enacted.[57] During the busy years 1854–60, 49 individuals and partnerships bought 282,000 acres in Minnesota. The populations of Minnesota and Kansas Territories were burgeoning, but despite their rapid growth, political factors were to keep them out of the Union until 1859 and 1861, though the Census of 1860 showed them to have much more population than Florida had entered with in 1845. They were a menace to Democratic proslavery control of Congress and of the country and had to wait. The census takers found 18,181 farms in Minnesota containing 2,711,968 acres and undoubtedly there were more tracts in the process of being made into farms. Kansas, where one writer maintains the residents were more absorbed with claim making and bushwacking than with farm making, had 10,400 farms containing 1,778,400 acres listed in 1860.

The speed with which the public domain was passing into private ownership and the large acquisitions by speculative interests and land grant railroads caused reformers to advocate restricting purchases of public land to actual settlers. Practically all the public lands in Ohio, Indiana, and Illinois had been entered, less than 2 million acres remained in Iowa, and very little in Mississippi and Alabama, except longleaf pinelands which were unwanted; thus land hungry pioneers were pushing the frontiers farther and faster into new areas in Kansas, Nebraska, Minnesota, California, and Oregon. They were preceding the surveyors and the agents who were negotiating treaties for Indian land.

[56] St. Croix Union, Oct. 10, 1856.

[57] *S. Ex. Doc.*, 34th Cong., 3d sess., Vol. II, No. 5, Part 1 (Serial No. 975), Oct. 13, 1856, p. 252.

Angry clashes bordering on agrarian warfare were occurring in Iowa, Wisconsin, Kansas, and California over the rights of squatters. Furthermore, conflicting laws and court decisions had reduced a seemingly simple and straightforward land system to muddle and confusion in places. Congress had passed new land laws without considering how they might affect the rights of entrymen already established under anterior laws. The Land Office had been unable to cut through red tape; the courts had been slow in deciding disputes; disrespect for the land laws and the administrative regulations existed everywhere; and a spirit of antagonism to the Federal government prevailed. This antagonism reached a high point in the later fifties and was an important factor in the political turnover of 1860.

Agrarian Unrest Over Land Questions

Iowa was particularly bedeviled by a series of issues that gave rise to long newspaper controversies and bitter disputes between corporate landowners and settlers. The first of these developed over the ownership of the 119,000-acre Half-breed Tract in the extreme southeastern part of Lee County on the Mississippi River. Under the Treaty of August 4, 1824, with the Sac and Fox Indians the land was to be allotted to half-breeds of the tribe in 640-acre tracts. An Act of June 30, 1834, relinquished all government rights in the land to the half-breeds "with full power and authority to transfer their portions. . . ."[58] Here was laid the basis of one of the angriest quarrels over land titles that this country has experienced. It lasted for a generation and left ill feelings that endured much longer. The Indian allotments in Iowa, like many of those in Alabama, Indiana, Kansas, and other states, were conveyed by their half-breed owners more than once. There was a great scramble to secure the rights because they bordered on the Mississippi. Various claimants appeared for the same tracts. Ultimately the tracts came into the possession of powerful economic interests who found themselves opposed by bold combinations of squatters. The New York Land Company purchased a large number of the claims, St. Louis capitalists acquired the rights of 15 or 20 half-breeds, and there were other smaller holders. In 1839 judgment titles were issued on all the land and in 1841 the tract was partitioned by the Federal District Court into 101 shares each carrying ownership to 1,000 to 1,200 acres, 20 to 27 lots in Keokuk and two in Nashville, the New York Land Company being the principal holder.

The settlers on the tract refused to recognize the company's title, would not buy from it nor sell their improvements and occupancy rights to it.[59] Isaac Galland, a local resident who was in turn physician, lawyer, preacher, author of a brochure on Iowa, and editor and publisher of the *Iowa Advocate and Half Breed Journal*, became the leader of the ramparts and one of the territory's best-known men. He had once cooperated with the company but later turned against it, calling it "a clan of heartless adventurers, and their corrupt subordinates," a "graceless band of swindling scoundrels," and "renegade ruffians. . . ."[60] Galland's extremist actions stirred up the people against the company which was pressing them to buy its titles. Like

[58] 4 Stat. 740 and 7 Stat. 229.

[59] D. W. Kilbourne, Jan. 15, 1845, to Jno. C. McCoy, Letter Book of Kilbourne, and a copy of letter of Kilbourne to Chas. H. Tillson, March 15, 1853, Kilbourne MSS., Iowa State Department of History. The New York Land Company consisting of Henry Seymour, Edward C. Delavan, Samuel Marsh, and Erastus Corning, all wealthy bankers and industrialists, was allowed 41 shares by the Court Decree of 1841 but acquired others and owned most of the tract, including the city of Keokuk. Its Iowa agent was David W. Kilbourne and after 1852 Charles W. Mason.

[60] *Iowa Advocate and Half Breed Journal*, Aug. 16, Sept. 22, 1847. David W. Kilbourne answered Galland in *Strictures on Dr. I. Galland's Pamphlet Entitled "Villainy Exposed," with some account of his transactions in lands of the Sac and Fox Reservation, Etc., in Lee County* (Fort Madison, Iowa, 1850).

the anti-renters of New York who were currently involved in a political campaign to secure relief from the demands of their landlords, the settlers on the Half-breed Tract organized for resistance. At a meeting in 1845 they resolved to tar and feather the representatives of the company.[61] The company, for its part, was contemplating a few ejectments as an example to others, but was fearful of the reaction. The local agent was instructed to select for ejectment persons who might not easily stir up hostile feeling and who would not be too obstinate. Settlers petitioned Congress for aid against the company, but were told that the Federal government in the Act of 1834 had surrendered all authority over the land. Senator Augustus C. Dodge of Iowa denounced the company which had few friends in the Iowa Legislature.[62] Long continued bickering, fighting, and litigation led the officials of the company to realize that some compromise was necessary. Its local agents were changed, settlers were assured that the company respected their occupancy rights (actually Charles Mason, who assumed charge of the property in 1852 had drafted Iowa's occupancy law), and during the next few years, with more gentle suasion, the settlers were induced either to sell their improvements or to buy the company title at modest prices.[63]

Before this dispute was well along toward settlement another and bigger agrarian conflict arose. In 1846 Congress granted land on the alternate section pattern to aid in improving the Des Moines River for navigation. The act was carelessly drafted by Congress without proper attention to earlier legislation which it affected; in turn it came into conflict with later railroad grant acts, and officials of the General Land Office issued conflicting interpretations of the law. As a result more than a thousand settlers took up land in the Des Moines River Tract for which they secured patents, only to be ejected later because the government had erred.[64] The first clash came in 1852 when the settlers organized an association for mutual protection, declared their intention not to pay more than the government price for their land and to "use every legal recourse and if it becomes necessary physical force to maintain" their rights. Their difficulty was that, because of overlapping grants, the lands were claimed by the State of Iowa, by the Navigation Company, and by a railroad, each of which went on selling its rights during the next 35 years. To protect their rights in improvements settlers found it necessary to buy their land two and sometimes three times. The conflict reached its final crisis in the late eighties when hundreds of ejectment suits were brought against settlers, resulting in a shooting affray. In 1893 some compensation was allowed the disillusioned settlers by Congress.[65]

A third series of clashes occurred, this time between settlers and a railroad, the Burling-

[61] Kilbourne, Feb. 1, 1845, to Hiram Barney, Kilbourne Letter Book.

[62] John T. Norton, Albany, July 22, 1846, to D. W. Kilbourne, Kilbourne MSS.; *Senate Reports*, 30th Cong., 1st sess. (Serial No. 512), No. 198, July 3, 1848.

[63] Both the Kilbourne and Mason collections in the Iowa State Department of History shed much light on this knotty question of the rights and issues on the Half-breed Tract.

[64] An Iowa State Commission reported on the losses settlers had suffered by improving lands for which they had either United States patents, warrantee deeds of railroads, deeds of the state government, or quitclaim deeds, or for which they had taken preliminary steps toward title under the Preemption or Homestead Acts. The number of claimants was 1,032; the value of their improvements was $758,031; and their losses were estimated at $800,000. *Report of the Commission appointed under the provisions of Chapter Seven of the private local and temporary laws of the Fourteenth General Assembly of the State of Iowa to ascertain the extent of losses of settlers upon Des Moines river lands by reason of failure of title* (Des Moines, 1872); C. H. Gatch, "The Des Moines River Land Grant," *Annals of Iowa*, I (April, July, October 1894, January 1895), 354 ff., 466 ff., 536 ff., 639 ff. Congress in 1893 appropriated $200,000 to adjust the claims of settlers on the Des Moines River lands.

[65] *Iowa Star*, Jan. 24, Feb. 5, 1852; letters of J. Fred Myers, Nov. 24, 1888, Samuel Heffner, Nov. 29, 1888, and numerous others, to Governor William Larrabee, Des Moines Land Company Files, Governor's Archives, Des Moines.

ton and Missouri River, later the Chicago, Burlington and Quincy Railroad. After the adoption of the Swamp Land Act of 1850 the State of Iowa had selected its wet lands very promptly and the easy-going land officers had been most liberal in determining what were swamplands. The state had conveyed the swamplands to the counties which thereafter tilted with the General Land Office about selections. Subsequently the Burlington Railroad claimed as part of its alternate-section grant 47,193 acres in western Iowa which the state had already selected as swampland, and 12,050 acres elsewhere. The state and the counties insisted on their right to its selections, as did their purchasers. In addition, persons who had settled upon the lands with the intention of preempting them as public land maintained their rights to do so against the state and counties and their buyers, and against the Burlington Railroad. Decisions of the Attorney General, the Commissioner of the General Land Office, and the Secretary of the Interior in the fifties had repeatedly favored the settlers, encouraging them to believe that they would eventually win, either as preemption claimants or as buyers of swampland titles from the state. But after 1861 with an Iowan as Secretary of the Interior the bulk of the lands in suspension were approved to the railroad.[66] The counties continued their efforts to upset the decision of the Department of the Interior, at which point the railroad threatened to move its line from the route already established and on which towns were growing up, thereby blackmailing local business interests into favoring a compromise.

In 1869, just when Mills County, which had most at stake, was signing a compromise, the United States Supreme Court made a final award in favor of a nearby county, the principle of which would also apply to Mills.[67] The Court's decision was the same as that which the Secretary of the Interior had rendered in 1858: favorable to the state and counties. It led to further litigation in the seventies when it must have seemed to many that this dispute, like the controversies over the Des Moines River lands and the Half-breed Tract, would never cease. In 1880 the Burlington brought ejectment suits against many settlers in Mills and other counties who refused to contract for land to which the railroad claimed title or to make further payments on land they had bought when it appeared the railroad's title was sound. No wonder the local paper reported that many discouraged people who had not been able to acquire land or who were mere tenants were abandoning Iowa and striking out for Nebraska and Dakota where there still was free land.[68]

Another river improvement and canal company to which a land grant was given, and twice enlarged, also fell into controversy with settlers on its lands, thereby creating another group of people who were critical of the way public land policies were functioning. In 1846 Congress first granted half the land within a strip 6 miles wide for the improvement of the Fox and Wisconsin Rivers and for the construction of a canal to connect their headwaters so as to permit boats to travel from Lake Michigan to the Mississippi. By sharp and clearly questionable means the promoters induced Congress to enlarge the land grant to include half the land within a 10-mile wide strip and to apply the mileage to the sinuosities of the Fox River rather than on a straight line. Various difficulties between the company and settlers purchasing from it or squatting on its land resulted in some of the same "anti-rent" agitation that has been seen in Iowa. It is probably no coincidence that much the same group of New York capitalists in control of the Fox and Wisconsin Improvement Company also owned the lands in the Half-breed Tract, the Des Moines River improvements

[66] Richard C. Overton, *Burlington West. A Colonization History of the Burlington Railroad* (Cambridge, Mass., 1941), pp. 122 ff., 186 ff. In 1861–63, 55,000 acres of 75,000 in dispute were confirmed.

[67] *Ibid.*, pp. 265–66, 405.

[68] *Glenwood Opinion*, Jan. 28, 1880, March 10, 17, 1883; Roscoe L. Lokken, *Iowa Public Land Disposal* (Iowa City, 1942), pp. 198 ff.

lands and, indeed, were also prominent stockholders in the Burlington Railroad, as well as in the St. Marys Falls Ship Canal Company which had a rich land grant.[69]

It was in California that a series of agrarian outbursts reached the most dangerous point and lasted over a generation. It has been seen in the treatment of private land claims how practically all the good coastal valley land from San Diego to Mendocino County in the north and well up the great Sacramento Valley was held in Mexican grants. Many of these grants of 4,436 to 49,000 acres had slight, if any, improvements; some had not even been located. Disillusioned and poverty-stricken gold seekers, forced to turn to the land for subsistence, squatted upon those undeveloped tracts and soon were at war with the owners who were seeking confirmation of their titles in the courts. A land commission attempted to weed out the spurious, antedated, and incomplete grants from those deserving of quick confirmation but was not altogether successful; litigation over titles continued in the courts for more than a generation. It later appeared that some highly questionable claims had been approved and a few deserving claims had been rejected. The judicial and administrative record was only fair, but the delay, though understandable, kept owners and squatters in a state of turmoil. Mob violence, destruction of property and livestock were common while expensive litigation dragged on.[70]

Not to be neglected in an enumeration of the anti-rent uprisings—for such they seemed to many timid souls witnessing the anger, if not the frustration, of the settlers in these disputed areas—is the sharp conflict that developed in southern Wisconsin between farmers and their creditors. Railroad promoters, unable to raise sufficient funds to build their projected lines, had appealed to the farmers along their route for aid. The latter were told that if they would exchange first mortgages on their property bearing 8 percent interest for the stock of the railroads, on which it was intimated 10 percent would be paid, the companies could use the mortgages to raise the necessary funds for construction of the road and the farmers would benefit from the speedier transportation and from the difference in interest. All went well for a time. Some $5 million was raised through the sale of the farmers' mortgages and construction was pushed westward across the state. Then came the Panic of 1857, the flow of capital ceased, and not a mile of railroad was put in operation. The farmers could get their grain to market no better than before but they now had to pay the 8 percent interest on their mortgages or be threatened with the loss of their homesteads while the stock they had received became worthless. They rose up in indignation at the promoters responsible for their plight, refused to pay the interest, organized "Home Leagues" to conduct their battle in the courts and the state legislature, and won the adoption of 14 measures designed to aid them by preventing foreclosures. These, however, were quickly found to be unconstitutional.

The farmers then followed the usual practices of debtors discouraging foreclosures, at times even resorting to violence. With the revival of prosperity in the sixties, some farmers succeeded in making compromises with their creditors, the railroads were completed and in some instances the previously worthless stock became valuable.[71]

[69] Joseph Schafer, *The Winnebago-Horicon Basin* (Madison, Wis., 1937), pp. 90 ff., and Irene D. Neu, *Erastus Corning. Merchant and Financier, 1794–1872* (Ithaca, N.Y., 1960).

[70] Paul W. Gates, "Adjudication of Spanish-Mexican Land Claims in California," *The Huntington Library Quarterly*, XXI (May 1958), 213 ff.; *id.*, "California's Embattled Settlers," *California Historical Society Quarterly*, XLI (June 1962), 99; and *id.*, "Pre-Henry George Land Warfare in California," *California Historical Society Quarterly*, XLVI (June 1967).

[71] Frederick Merk has an admirable chapter on "Railroad Farm Mortgages" in his *Economic History of Wisconsin During the Civil War Decade* (Madison, 1916), pp. 238 ff.

While these conflicts over land titles were occurring in Iowa, Wisconsin, and California, the feeling was growing in the West, and indeed among workingmen in the East, that wild land on the outer edge of settlement had little or no value, that it was the labor of those who improved it, did road work, and paid taxes for schools and for the support of other social institutions, which gave value to their own land and to that of absentees. Those who held these views agitated for a reduction in the price of public land, the withholding of land from market to allow settlers to establish their preemption claims, restrictions on the amount of land open to cash purchase, and, finally, for free lands and the cessation of public land sales. With public sales ending, the only route to ownership would be through preemption or homestead so far as Federal lands were concerned.

The huge quantities of land that speculators had engrossed during the boom years of the early fifties was commented on frequently and at length by western papers and given even more attention in the influential *New York Tribune*, a powerful Whig, later a Republican, organ. A brief summary of the anti-speculator attitude and the move to restrict sales to settlers which began in the mid-thirties is useful here.

In 1837 Senator William S. Fulton of Arkansas advocated restrictions on sales, declaring that whole counties had been entered by speculators in 1836 and almost immediately sold to settlers at large increases in price, but on credit. Only the issuance of the much reprobated Specie Circular had saved even larger tracts from the speculator. The *Ohio People's Press* deplored the "nabobs and desperate speculators who will make immense fortunes out of the hard earnings of the western farmers . . . a Landed Nobility not perhaps in title but in overbearing and oppressive power." Look, it said, "at this scandalous gambling in your sweat-bought earnings, for the purpose of buying up and monopolizing the beautiful and fertile lands of your country . . . . Are you willing to become the beasts of burden for a proud and haughty Landed Aristocracy?"[72] Jackson was commended by the *Indiana Democrat* on January 3, 1837, for issuing the Specie Circular and urging that the public lands be sold only to actual settlers. Such a policy should have been adopted long ago, it maintained. "Instead of now having the public lands engrossed by a horde of speculators, who never will and who never intended to settle among us, Indiana would have had a larger population of industrious farmers." The "merciless speculator" is a positive injury.

The West's criticism of a land system that had allowed speculators to monopolize many million acres of land increased support in Congress in 1837 for a bill to restrict sales to settlers, but the measure became bogged down in amendments and got nowhere. Continued attacks were made upon the wide-open character of public land sales. *Allen's Land Bill Almanac For The Year 1846* declared that the settler was preceded by the speculator in new areas and had to buy from the latter or become a squatter. "The real price to the actual settler is nearer ten dollars an acre . . . ." it maintained.[73]

In 1851 the St. Paul *Minnesota Democrat* warned that land sharks were about, and that speculators from abroad were out "to plaster" land warrants over our soil, and lock up our fair domain. "This is a nuisance, a sore evil and injury to our people, and the prosperity of Minnesota that demands a speedy remedy."[74] Limit land sales to actual settlers, urged the *Illinois State Register* of March 11, 1851. "Had we our own way about the matter, not a foot of land should

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[72] *Cong. Globe*, 24th Cong., 2d sess., Jan. 31, 1837, p. 143; *Ohio People's Press* quoted in the *Cincinnati Daily Gazette*, July 6, 1836.

[73] *Logansport Canal Telegraph*, Aug. 4, 1838, Ignatius Mattingly, Corydon, Ind., Jan. 28, 1838, to John Tipton, in Nellie Armstrong and Dorothy Riker, *The John Tipton Papers* (3 vols., Indianapolis, 1942), III, 527; *Allen's Land Bill Almanac for the Year 1846* (Columbus, Ohio), p. 22.

[74] April 15, 1851.

ever be exposed to sale," said the *Nebraska Advertiser*, which was getting up petitions against the sales recently proclaimed for Nebraska.[75] The *DeSoto Pilot* of Nebraska reporting on an anti-land-sale meeting at Fontanelle, held to devise ways to prevent land sharks from seizing a large area of public lands, urged that all sales be postponed for 15 years. The *Bloomington Pantagraph* said it was "the demon land speculation that is to be throttled . . .; land speculation that seizes the choice spots, separates the settlers' cabins by wide tracts of unreclaimed wilderness, and encircles every embryo town and populous city with leagues of waste land as absolutely wild as when the deer and the Indian were its only inhabitants."[76] Reserve the public lands for actual settlers, urged the Monticello *Indiana Spectator*. The government should refuse to sell to "bank speculators and Shylocks." Land monopoly, "the exclusive ownership of land by the few is the greatest curse to any country," thundered the *Lincoln (Illinois) Herald*, a paper published in the heart of a region of great estates.[77] The Stevens Point *Wisconsin States Rights*, of May 29, 1861, thought that the land policy of the government had been consistently mistaken.[78]

Our last sample of western opinion on the effects of the absentee speculator is taken from the travel account of Jane Swisshelm, a widely read journalist of the mid-19th century. She said of the area between Hastings and Red Wing, Minnesota, "There are a few farms, but generally it is a speculators' desert," thereby either coining an appropriate phrase or preserving one perhaps commonly used at the time.[79]

Westerners increasingly came to feel that direct efforts to reduce the amount of absentee ownership should be made. Tax sufficiently high to compel the speculators to sell, urged the *Arkansas Gazette & Democrat* of November 11, 1853. Place the burden of support of government on real property, tax personal property lightly or not at all, and speculators will have to disgorge their holdings. The Dubuque, Iowa, Emigrant Association said that one of the inducements to settle in northern Iowa was that there were quantities of speculator-owned land on which settlers could pasture their livestock, and cut their hay. It might have added that if there was any timber on absentee-owned land, it was sure to go quickly.[80]

This land reform ferment, which was also being expressed in the East by workingmens' groups and most ably by the *New York Tribune*, had its impact on the Democratic leadership of the Pierce administration. In his first annual report as Secretary of the Interior, Robert McClelland of Michigan recommended limiting sales to actual settlers, thereby taking a position reminiscent of Jackson's in his famous State of the Union message of 1836. "Nothing retards the growth and prosperity of the country more, nor inflicts greater injury upon the resident," he said, "than the possession, by individuals or companies, of extensive uncultivated tracts of the public lands." Whether McClelland was simply trying to bring order and system to administrative policies, or whether he was following the lead of his reformist-minded Land Office Commissioner, John Wilson, which is more likely, at least the statement coming from the Secretary got attention.[81] Thereafter neither McClelland nor Wilson gave much information in their annual re-

[75] July 23, 1857.

[76] *Bloomington Pantagraph*, March 8, 1859.

[77] Sept. 5, 1860.

[78] *Eau Claire Free Press*, Jan. 15, 1862, May 7, 14, 1863.

[79] Arthur J. Larsen, *Crusader and Feminist. Letters of Jane Grey Swisshelm* (St. Paul, 1934), p. 153.

[80] Dubuque Emigrant Association, *Northern Iowa. Information for Emigrants* (Dubuque, 1859), p. 12.

[81] John Wilson, as Commissioner in 1852, had recommended postponement of sales announced to be held at Stevens Point but his superior A. H. H. Stuart had opposed postponement, as had Fillmore. Wilson, Oct. 22, 1852, to A. H. H. Stuart, Secretary's Files, Department of the Interior. Neither Secretary McClelland nor President Pierce was strong enough to defend Wilson against the spoilsmen who wished his removal even had they desired to do so.

ports about public offerings of land at auction, but the right of unlimited purchase continued.

In his report for 1856, Wilson's successor Hendricks maintained that, except for lands given for education and internal improvements which would be subject to disposition by the states, the true policy was "to secure the public lands to actual settlers thereon, and withhold them, as far as practicable, from speculators." For settlers on unoffered land the law prescribed no limit of time within which the preemptor should complete his entry and pay for the land. McClelland thought such indefiniteness was not good policy. Under existing law the only way to compel such settlers to prove up and take title was to proclaim the land for sale. He did not want to do this because once land was offered for sale nonsettlers would be enabled to engross large areas. But Congress could amend this situation by requiring settlers to complete their entries and pay for their land within a prescribed time, making public sales unnecessary and thus preserving the lands from speculators.[82] Not only did Hendricks suggest to Congress how further speculation could be prevented in areas newly opened to settlement, but in the fiscal year ending July 30, 1856, he ordered no public land into market except tracts restored to entry after the railroads had made their selections; this seemed unavoidable under the law as it then stood.

By 1857 Hendricks was of the opinion that the "numerous and extensive settlements" which had been made in Kansas, Nebraska, Minnesota, Iowa, Wisconsin, and Michigan, had "so far matured, and the lands have been so long occupied, as to justify the government in expecting and requiring payment." He recommended that settlers on unoffered land be allowed one year from the date of their settlement and those on unsurveyed land be allowed a year from the completion of the survey and the return of the township plats to the local land office to pay for their claims. Under his plan settlers on unsurveyed land would still have had an undetermined period of time within which to complete their payments, depending on how soon the surveys were run, but those on surveyed lands would only have one year. Hendricks' recommendation was probably designed to steer between the West's demand for free land and the South's opposition to it. It was a less radical proposal than Jackson had made in 1836 when he favored restricting sales to actual settlers only "at a reasonable reduction of price . . . ."

Jacob Thompson, McClelland's successor as Secretary of the Interior, was a large slave-owning planter of Arkansas. Like McClelland and Hendricks, he did not approve of the indeterminate length of time that settlers on unoffered land could use the public land without paying for it, the more so because all such settlers had an interest in "opposition to a public sale by proclamation, when the good of the country may require it." His remedy was a law requiring settlers on unoffered land "to make their proof and payment within a specified period . . . ." He said nothing about restricting purchase to actual settlers.[83]

James Buchanan found it difficult to steer his way between the two opposing groups on land questions. He followed the usual Democratic policy of deploring speculation and land accumulation by individuals and companies. But instead of supporting a measure restricting purchases of land to small tracts to actual settlers, he proposed "to limit the area of speculation as much as possible" by having the extinction of the Indian title and the extension of surveys "keep pace with the tide of settlement." This smacks of late 18th-century proposals to limit the area open to settlement so as to assure compact and orderly development. Also, it is not far from

[82] *S. Ex. Doc.*, 34th Cong., 3d sess., Nov. 29, 1856, Vol. II, No. 5 (Serial No. 875), Part 1, p. 190.

[83] *S. Ex. Doc.*, 35th Cong., 1st sess., Vol. 2, No. 11 (Serial No. 919), Nov. 30, 1857, pp. 60, 99.

the idea behind the Foote Resolution that led to the great debate on land and constitutional questions in 1829–30. It was wholly unacceptable to the West, whose people for a half-century had been successful in speeding up the process of removing Indians and widening the area of public land available to settlers. Buchanan, peculiarly sensitive to the pro-slavery wing of the Democratic Party, was not sympathetic to granting free homesteads or to extending the period of grace during which preemptors were not required to pay for their land. Furthermore, when it came to granting land for western railroads, he had to move cautiously, for he knew the dominant element among his supporters would favor a railroad to the Pacific only if it were to be built from some southern city.[84]

Buchanan could not give up the notion that the public lands should be a source of revenue to the government even though revenue from this source had progressively declined from the high level it had reached in 1855 when the first big rush for graduation lands had occurred and when buyers were anxious to secure locations near projected railroads as withdrawn public lands were restored to entry.

INCOME FROM PUBLIC LAND SALES[a]

Year	Income from Land Sales	Percentage of Federal Income
1851	$2,352,000	4
1852	2,043,000	4
1853	1,667,000	2
1854	8,471,000	11
1855	11,497,000	17
1856	8,918,000	12
1857	3,829,000	5
1858	3,514,000	7
1859	1,757,000	3
1860	1,779,000	3
1861	871,000	2

[a] For convenience I have used the statistics in *Historical Statistics of the United States*, p. 712.

[84] Richardson, *Messages and Papers of the Presidents*, V, 459–60.

In his veto of the homestead bill of June 22, 1860, Buchanan deplored the loss of revenue it would entail and predicted that if he signed it, future revenues from sales were illusionary. His Secretary of the Interior, he declared, had told him that not a million dollars would be raised from sales if the bill were signed. The bill was not signed and the income from land sales the following year was $871,000.

Buchanan had the misfortune to come to power just before a great financial panic and depression set in. Since 1849, when the extraordinary expenditures occasioned by the Mexican War ended, the United States Treasury had enjoyed substantial surpluses, reducing the national debt from $63,062,000 to $28,701,000 in 1857. The first year of the depression saw government income melt away while expenditures increased, leaving the largest peace-time deficit—$27,530,000—the country had thus far suffered. The administration panicked and rushed public lands into market as the Van Buren administration had done in 1838–40. Altogether 35,500,000 acres were ordered to sale in comparison with less than 11 million proclaimed for sale in the days of the Pierce administration. No longer did officials feel the government could afford to allow settlers the long period of grace they had been enjoying. Money was needed to meet the deficit and, if necessary, it must come from the pioneers creating farms on the frontier. It may have been a mere coincidence that only 2,500,000 acres in the slave states were proclaimed for sale, while the balance was all in free state territory. However, the difference was noted by people in the Upper Mississippi Valley who were hard hit by the proclamations. At the very time the sales were being held, the leaders of the administration in Congress were trying to defeat the free homestead measure that had gained wide support in the West, especially during the months following the Panic. Failing to defeat that bill, the administration's supporters amended it almost to the point of

emasculation. It then passed and went to the President who vetoed it.

This series of events—the proclamations of public sales largely in northern territory which made it necessary for settlers to come to terms with moneylenders and loan sharks at their 24 to 120 percent interest charges; the veto of the severely weakened homestead bill; and the effort to force slavery into Kansas—created a political revolution. It drove normally Democratic westerners into the Republican Party and made it the majority party for years to come. States in which public lands were ordered to sale reported the lowest percentage of votes for Breckenridge, the candidate of the slavocracy party that had ruled since 1853; Minnesota gave him 2 percent, Iowa 0.8 percent, Wisconsin and Michigan 0.5 percent. Kansas, which had been most hurt by the land sales of 1858–61, could not vote in 1860 but in 1864, the first year that it could register its attitude toward the party of Buchanan, it voted 5–1 against it. In these states and territories where lands were pushed onto the market in 1858–60 and a heavy burden of mortgages was established, loyalties to the Republican Party were to be persistent in later years.

By 1862 the income from public land sales was down to $152,000, which was lower than that of any year since 1800. Caleb Smith, the Secretary of the Interior, lugubriously reported that it was not sufficient to pay the expenses of the land system.[85]

Farm Making and Dealers in Land

We have seen that during the years 1837–62 a substantial portion of the public land was not conveyed directly to actual farm makers but to "speculators." The term has a wide connotation. It included settlers who entered more land than they could use, local real estate agents, politicians, lawyers, and merchants, officers of the Army, Indian agents, as well as eastern capitalists operating with their own money or that of others entrusted to them for investment in western lands. Few westerners were above speculating in land—Abraham Lincoln was one of the few. One shrewd English observer of western traits remarked in 1862:[86]

> Speculation in real estate . . . has been the ruling idea and occupation of the Western mind. Clerks, labourers, farmers, storekeepers, merely follow their callings for a living, while they were speculating for their fortunes. . . . The people of the West became dealers in land, rather than its cultivators.

On every frontier the settler-speculator was present. By claiming 320 acres instead of 160 or even 80, he separated himself that much more from his neighbor. He had to bear a heavier proportion of the cost of building and maintaining roads; either his school costs were increased or the establishment of schools was delayed; the expense of local government when the land tax was the principal source of revenue became burdensome. Other social institutions like churches, granges, and railroads came more slowly because settlers were widely dispersed.

The principal difference between the settler-speculator operating in a small way and the absentee, capitalist-speculator was that the former was making a farm and contributing to the development of the community, though his contribution might have been more valuable or larger if he had followed Horace Greeley's advice and acquired only so much land as in a few years he could transform into a productive farm. Yet it might be the small profit the settler could make by selling off a surplus forty or eighty that would provide him with the means to buy necessary livestock, tools or fencing. Profits from his petty speculation were not being drained off to other sections as were those of absentee owners.

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[85] Secretary of the Interior, *Annual Report, 1862*, p. 3.

[86] D. W. Mitchell, *Ten Years in the United States? Being an Englishman's Views of men and things in the North and South* (London, 1862), 325–28.

Western criticism of the absentee, nonresident speculator was always strong because it was believed his activities raised land prices to a level dangerous for the actual farm maker, burdened him with a heavy debt, delayed him in making improvements that required considerable capital, gave rise to tenancy, and in many valuable areas concentrated the ownership of land in a few hands. There is real substance in this indictment as data collected by the Census Bureau in 1880 and 1890 were to show. In areas where large speculators had been most active—Illinois, Iowa, Missouri, and Wisconsin—tenancy was found to be most concentrated in 1880, the average size of farms was greater, and the number of large farms in excess of 500 and 1,000 acres was higher. There can be no doubt that by intruding himself between the settler-farm maker and the government, the speculator contributed to tenancy as, in fact,did the land grant railroads and the states which tried to exact for their lands prices well above the government minimum.

Yet it must be noted that in these four states where large areas had been acquired by speculators, land companies, and railroads there was extraordinary activity in farm making in the 1850's. In fact these four states could boast that in this decade they added 33 percent of the new farms in the country, 28 percent of the new land in farms, and 20 percent of the increased value of farmland.[87]

Increase in Number and Value of Farm in 1850's

State	New Farms Created	New Acreage in Farms	Increased Value of Farms
Illinois	67,101	8,874,577	$312,810,743
Iowa	46,348	7,333,843	103,241,980
Missouri	36,333	10,252,140	167,406,583
Wisconsin	49,093	4,916,889	103,588,601

[87] *Ninth Census of the United States* (Washington, 1872), 340–41.

Do these figures tend to prove that speculation was less of an evil and a hindrance than the West thought? The explanation seems to be four-fold.

Speculators in the fifties confined their attention to central and northern Illinois, southern Wisconsin, most of Iowa, and the more central part of Missouri. Elsewhere in these four states settlers could take their time in making their selections. In these other areas and in much of central and southern Indiana and the non-cotton-producing lands of the South, individuals were generally able to secure the land they wanted. Even in the more popular areas the early bird who made his selection before the auction could file his preemption papers and, if he had or could borrow the money, could gain title no matter how many speculators looked longingly at his tract. As long as surveyed land remained unoffered, only preemptors could select and gain title, as we have seen. From the filing of his declaratory statement until the auction the settler was privileged to use his capital for improvements and had no need to worry until the announcement of the auction. In some places such as Kansas he might have as much as 3 to 5 years before he had to purchase in order to protect his equity. Or if, after the auction, he found an attractive quarter-section which was still owned by the United States he could settle upon it, file his declaratory statement, and have a year before he had to prove up and pay his $200 for the tract. Beginning with 1853 in California and 1854 in Kansas, Nebraska, and Minnesota Territories, settlers could move upon unsurveyed land and have the use of a quarter-section without payment until it had been surveyed and was offered at auction at an announced date. Thus they could anticipate the speculator. The West growled about the cash sale system and the public auction, but western spokesmen sometimes exaggerated the harm the system did in an effort to paint it so black that a free homestead law would be enacted.

If we disregard the aspersions directed

against the loan sharks, as the West liked to call the moneylenders, we will find that they were performing a service of considerable value to pioneers, at least as long as the government insisted on selling its land. When the public auction was held the loan shark would enter the land for the squatter (after 1841 the preemptor) who had not yet accumulated the necessary $200 for his quarter-section. Later comers, arriving in an area after the first wave of squatters had selected the most promising tracts, often preferred to buy from those who had preceded them. The sale of claims, even before the preemption entry had been filed, became an important part of the western land business. Also, many settlers who filed preemption entries on land which remained unsold after the auction did not want to wait a year for their titles. Some of the more roving class wanted to be up and away between the time they made their entry and the time they were required to prove up. Resales were easier if the preemptor could procure his title and then resell to another for the profit his early selection and his improvements justified. Transactions of both kinds were facilitated by the loan shark. In short he permitted the settler to conserve what capital he had for living expenses, stock and equipment, to secure his land with borrowed money, and to cash in on his improvements if he wanted to do so.

Frontier interest rates were high, but risks were great. Ordinarily the moneylender wanted a quick turnover of his capital and preferred to have payments made at the end of the year, for he dared not charge the same 18, 24, or 48 percent interest in renegotiating the loan that he had hidden in the original transaction. He did not want the land to fall back into his hands for it then became unproductive and in poor times the cost of carrying it for years might eat up the expected profit. Foreclosures had, however, to be resorted to when the lender's equity was threatened. A moneylender engaged in the business of entering land for settlers necessarily appears in the land statistics as a large scale land speculator entering thousands of acres, but his object was to turn over his capital, not to retain the land.

Few speculators could withhold their land from sale or renting for long because taxes and other costs rose swiftly, and still fewer could invest capital in developing their land. Consequently, in periods of rising prices, as in the fifties, the opportunity to sell at a profit led to a speedy turnover of many large holdings. Swierenga found, for example, that in representative Iowa counties large owners of 460,000 acres sold their land within 2½ years on the average for a net profit that ranged from 17 to 115 percent on the investment.[88] These owners were fortunate to have entered their land during a great rush for Iowa land that lasted several years after their entries were made, during which time some 5 million acres in the state were withdrawn from sale to permit the railroads to select their grants. This created an artificial scarcity in the midst of the land rush, thereby permitting the unusually high and quick profits. But what these did, most large landowners in less favored areas were compelled to do by financial exigencies or decided to do because they were worried about the rising costs of carrying the land and feared depredations upon their property. If they were caught during an economic depression with insufficient funds to carry their investments, taxes and court costs might compel them to sell. The case of John Grigg was exceptional—he had started selling soon after purchasing but never was in financial difficulties, even during the long depression following 1837, and could sell as the demand rose. An examination of the deed records of more than a hundred counties in the prairie states has shown that the liquidation of the speculative holdings began early and was almost fully achieved within a few years for the poorly managed investments. Not all this liquidation, it should be said, was voluntary or profitable to the owners.

[88] Swierenga, p. 301.

ACREAGE OF LAND IN FARMS

	1860	1870	1880	1890
Illinois	20,911,989	25,882,861	30,498,277	30,498,277
Iowa	10,069,907	15,541,793	24,752,700	30,491,541

Not all speculators merely held their land idle waiting for it to increase in value. Some of them, using hired labor, created bonanza farms like Isaac Funk's 26,000-acre property in McLean County, Illinois, or Michael Sullivant's 40,000-acre Burr Oaks farm in Ford County. Others permitted squatters to remain on the land, perhaps on the condition of paying the taxes. Mathew J. Scott who had 42,000 acres in central Illinois began by making improvements at his own expense and renting the improved land to tenants. Later he resorted to rental sales agreements whereby tenants agreed to make specified improvements on assigned tracts and to pay a rent of 16 bushels of corn per acre for 6 to 9 years, after which the farm was to be theirs. But these bonanza farms were not to survive for long. The Funk property was gradually divided among the children and grandchildren of old Isaac, the Sullivant farm was lost on foreclosure, and the Scott family holdings were greatly reduced by sales to men of means and conveyances to tenants. Thus the speculator-developer contributed to the increase in the number of farms, some of which were, at any rate, temporarily tenant operated.

The results of the liquidation of the speculative holdings and the contraction of the bonanza farms may be seen in the continued increase in the number of new farms long after the public domain was virtually gone (in Illinois by 1855; in Iowa there remained 1,192,000 acres in 1870) and in the diminishing size of farms.

AVERAGE ACREAGE OF FARMS

	1850	1860	1870	1880	1890
Illinois	158	146	128	124	127
Iowa	185	165	134	134	151

Factors other than the liquidation of speculators' holdings and the division of bonanza farms were also responsible for the large increase in the number of farms in a single decade. A good part of the graduation lands, especially those in Missouri, were sold. The advertising campaigns of the land grant railroads, especially the Illinois Central and the Hannibal and St. Joseph, were drawing settlers to their own land and to other lands in their vicinity. All four of the states were offering their swamplands at very low prices. True, much of the swampland passed first to large dealers but they were usually anxious to sell as early as possible.

A thoughtful study of 61 prairie landlords in eight counties of east central Illinois offers an interesting insight into the beginnings of tenancy. It traces the establishment of their estates, shows the nature and cost of the early improvements, and the sale of portions of the land to finance more intensive improvements on the remainder.[89] From the outset the tenant farmer on the American prairies was in a very different position from the Irish peasant whose woes Americans were hearing so much about at the time, or from the freedmen of the post-Civil War period—the sharecroppers on the cotton plantations of Mississippi and Alabama. Tenancy was not always a step up on the ladder toward ownership, though some did attain that goal. Autobiographical sketches contained in western county histories show that numerous self-made men of property in Iowa, Wisconsin, and Illinois started as hired hands or tenants and worked up to ownership. It should be

[89] Bogue, *Patterns From The Sod, passim;* Allan G. Bogue, *From Prairie to Corn Belt: Farming on the Illinois and Iowa Prairies in the Nineteenth Century* (Chicago, 1963), pp. 47 ff.

remembered, however, that those who did not move up were not able to pay for their inclusion in such books and their record of failure is not as apparent as is the record of those who succeeded. The scattered bits of information we have on tenancy before 1880 suggests that in the fifties it was regarded as a transitional stage in which few expected to remain for long, that tenants were acquiring some livestock and equipment and, if they could not gain title to the land they were improving, they would not tarry many years on it but would strike out for free or cheaper lands farther west. [90]

After learning the rudiments of prairie agriculture in Illinois or Iowa in the fifties and sixties, pioneers were conditioned for the harsher struggle on the Great Plains in Nebraska or Dakota. They could adapt themselves the more easily because they were already accustomed to the wide-open spaces, the absence of timber for fuel, construction and fencing, the tough prairie sod, and methods of drawing water from the subsoil.

The role of the speculator in promoting and directing settlement to the areas in which his land lay was important. He advertised extensively in local newspapers and the larger investors inserted regular advertisements in eastern papers. Those operating on a sufficiently large scale prepared brochures describing their lands, others laid out towns, perhaps erected flour mills, set up stores and offices—for land agencies sold their land on credit, thereby enabling purchasers to invest most of their resources in improvements. Even absentee speculators on occasion showed a willingness to invest in improvements to make their land salable. [91]

Canals, river improvements, railroads, even wagon roads promised to do much for new communities. It was easy for most inhabitants to favor liberal grants of public lands to make their construction possible. But the West could never have gained such aid for these much desired improvements if easterners like Daniel Webster, Congressman John A. Rockwell from Connecticut, Senator Henry Hubbard from New Hampshire, and many others with investments in the West had not come to its assistance. To the four states of Illinois, Iowa, Missouri, and Wisconsin 16 million acres were given for transportation improvements. With rare exceptions the owners or managers of these enterprises were anxious to settle their lands. Traffic would assure profitable operations of the lines and to provide that traffic they had to settle farm makers on their land and on the alternate reserved sections held by the government. At the same time they hoped to sell their lands at prices that would substantially contribute to construction costs. Withholding the lands from market did nothing but harm. Consequently, every effort was made to get purchasers who would create farms or promote towns. Over and over the companies reiterated their disinclination to sell to mere speculators although sometimes their officers, in a desire to make their annual reports show rapid progress, did sell large blocks of land to purchasers of this description.

Railroad Land Sales

What individual speculators did on a relatively modest scale in advertising their lands, the railroads did on a magnificent scale. The Illinois Central, the first of all the land grant railroads and in one respect the most successful—it recovered from land sales the full cost of building its 705 miles of aided mileage—

[90] The fact that some Iowa speculators were not interested in renting to tenants but preferred to turn over their investment through sale does not vitiate the argument that their activities had raised the cost of farm making and contributed to tenancy. *Cf.* Swierenga, pp. 334–35.

[91] *John W. Taylor's Descriptive Pamphlet No. I. The West, Description of Iowa. Information for Those Seeking New Homes or Profitable Investments* (July, 1860); *Catalogue of Lands in Iowa, Wisconsin, Minnesota, etc., for Sale by Cook & Sargent, Davenport, Iowa; Cook, Sargent & Downey, Iowa City, Iowa; Cook, Sargent & Cook, Des Moines, Iowa; Cook, Sargent & Parker, Florence, Nebraska* (Davenport, Iowa, 1858); *Northern Iowa. Containing Hints and Information of Value to Emigrants* (Dubuque, 1858).

early began a widespread campaign to bring settlers to its lands. Through well-designed and illustrated placards sent to every Post Office north of the Mason-Dixon line and east of Indiana, handbills widely distributed in rural areas and farm journals, and elaborate brochures printed by the hundreds of thousands, it brought to the attention of eastern farm folks and immigrants arriving at the major ports the advantages of settling in the prairie state. Rich soil, once broken, was easily cultivated and produced high yields. The ease of marketing, the spread of social and religious agencies were all stressed, and an almost irresistibly idyllic picture was presented. To portray Illinois as the "Garden State" of the West, the Illinois Central enlisted the writing talents of James Caird, the most eminent English agricultural authority, Richard Cobden, Colonel Oscar Malmborg, a prominent Norwegian-American, and Francis Hoffman, a leading German-American who later became lieutenant governor of the state.[92]

Officials of the Illinois Central Railroad began their big advertising campaign in 1854 and 1855 and within little more than 3 years had sold 1,200,000 acres, or nearly half the company's grant, at an average price of better than $11 an acre. True, a considerable portion of these sales had to be cancelled later because they were for large blocks of lands contracted to parties for resale who were unable to carry the business after the Panic of 1857. Equally important is the size of the sales.

[92] I have related the efforts of these and other men to promote emigration to Illinois in my *Illinois Central Railroad and its Colonization Work* (Cambridge, Mass., 1934). Persons interested in why Illinois became the state with the greatest drawing power in the 1850's should look into one of the amazingly attractive pamphlets the Illinois Central distributed broadcast with the title: *The Illinois Central Rail-Road Offer for Sale Over 2,400,000 Acres Selected Prairie, Farm and Wood Lands in Tracts of any Size to Suit Purchasers, on Long Credit and at Low Interest, Situated on Each Side of their Rail-Road, Extending all the Way from the Extreme North to the South of the State of Illinois* (New York, 1855).

Number of Land Sales of the Illinois Central by Amount of Acreage, 1854–1860

Size in Acres	Number of Sales
40	5,667
80	3,754
120	492
160	1,435
200	111
240	151
280	40
320	396
Over 320 acres	407
Total number of sales	12,453
Cancellations	331

Public opinion in Illinois was not favorable to withholding railroad lands for high prices, a fact of which the officials were well aware. By 1854 they had the construction of the road well along, had selected their lands and had given them a rough appraisal; they now began their large advertising and publicity program. Their campaign coincided with an era of almost unexampled prosperity occasioned by the Crimean War, a high price for wheat and an increased flow of European capital into American railroads, land, and other investments. Land values in the West, particularly in Illinois, surged upward to such an extent that the $5-minimum placed on the railroad land caused no trouble. Possibly the willingness of the company to sell to some 1,400 squatters on its lands the 40 or 80 acres they were improving at $2.50 an acre won for it some favor. The steep rise in land values indicated that the railroad prices were not out of line. Then too, the extremely low interest rate—2 percent at the outset—charged on delayed payments won warm approval. In the midst of widespread prosperity few people grumbled. Illinois, however, was no longer a very suitable place for penniless immigrants to begin farming; it was better for them to go farther west to Iowa, Missouri, or Kansas. Immigrants coming to Illinois with considerable capital could find an abundance of land there at $4 to $10 an acre.

The quantity of cheaper lands in the more distant communities drained off those who could not find what they wanted in Illinois and, indeed, for the next 20 or 25 years they continued to attract farm laborers, tenants, or mortgage-ridden farmers from states farther east who despaired of ridding themselves of their burdens. By 1870–80 the frontier in Dakota and Montana was drawing the less successful from parts of Wisconsin, Iowa, and Missouri, as well as Illinois. If the public land served as a safety valve (Fred Shannon was emphatically convinced it did not), it did so by the opportunity afforded those who had not quite succeeded in becoming landowners, to try again on a newer frontier. By the late seventies and eighties central Europeans, Poles, and eastern Germans were coming to Illinois in noticeable numbers and were taking over the tenancies of discouraged older Americans who were going in droves to the new frontier farther west. Special trains carried thousands of these older American tenants, and with them went the agrarianism that might have flourished in the middle border but was now to be centered in Kansas, Nebraska, and Minnesota.

As the pioneer land grant railroad, the Illinois Central established the precedents and set the example for other land grant railroads to follow. Soon the Hannibal and St. Joseph was following in its footsteps trying to draw settlers to its 611,000-acre grant in Missouri. By the sixties numerous other railroads were vying with each other to attract immigrants from abroad and to obtain their share of the continued stream of people moving out of the hill areas of the Northeast. Before the emigration promotion work of the land grant railways was completed, it could almost be said that there was scarcely a rural hamlet in the British Isles, Northern Europe, and the northeastern states from Maine to Maryland that had not seen their posters in public buildings, or experienced visits from their traveling agents or lecturers.

Supplementing the work of the railroads were the activities of official emigration agents appointed by Wisconsin, Iowa, and Minnesota, and later other western states, who prepared brochures somewhat similar to those of the Illinois Central giving information about their localities and offering counsel. It is small wonder that Illinois added more people in the fifties than any other state, even including New York, and that Illinois, Wisconsin, Iowa, and Missouri were among the most popular states with immigrants, especially those from England, Ireland, the Scandinavian countries, and Germany.[93]

Railroad construction greatly extended the areas in which it was possible to conduct agricultural operations on a commercial scale. By 1860 Illinois had been crossed by seven east-west lines, and boasted a mileage greater than any other state but Ohio. Southern Wisconsin was crossed by three lines which had also considerable branch mileage. Missouri had completed the Hannibal and St. Joseph across the state by 1859 and was pushing four other lines rapidly to completion; by 1860 the state had 817 miles of railroad. No railroad had been built across Iowa but there were 655 miles of lines in operation within the state in 1860.[94]

In summary, it may be said that in these four states where speculators were active, the acreage of land in farms increased markedly, partly because individuals were selling off surplus land, partly because moneylenders were active in the time entry business, partly because some speculators were also developers but, above all, not because the speculator

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[93] Kate Asaphine Everest, "How Wisconsin Came By Its Large German Element," State Historical Society of Wisconsin, *Collections*, XII (Madison, Wis., 1892), 299 ff.; Marcus L. Hansen, "Official Encouragement to Immigration to Iowa," *Iowa Journal of History and Politics*, XIX (April 1921), 159 ff.

[94] Frederic L. Paxson, "The Railroads of the 'Old Northwest' before the Civil War," *Transactions of the Wisconsin Academy of Sciences, Arts and Letters*, Vol. XVII, Part 1 (October 1912), 243 ff.; Paul W. Gates, "The Railroads of Missouri, 1830–1870," *Missouri Historical Review*, XXVI (January 1932), 126 ff.; Henry V. Poor, *Manual of the Railroads of the United States*, 1867, p. 21.

was present, as some have assumed, but because the railroad was!

Tenancy

It was not until 1880 that the Bureau of the Census began to compile figures on the respective proportions of farms operated by owners and tenants. That there had been no effort to gather such data before, and little discussion about the need for such data suggests that few people were aware of the problems that were later to be associated with tenancy. True, land reformers had predicted that tenancy was certain to result from the policy of permitting unrestricted purchasing of the public lands by capitalists, and there was abundant evidence of its existence if one looked for it. Nevertheless, the census data of 1880 was shocking to those concerned with rural problems. For the four states we are here discussing, they show that Illinois had 32 percent of its farms tenant-operated, Missouri 28 percent, Iowa 24 percent, and Wisconsin 10 percent. Taken together, a quarter of the farms in the four states were tenant-operated.

The great rush of northern Europeans and eastern Americans for land in the Upper Mississippi Valley that was somewhat slowed by the financial crash of 1857 and the War years revived thereafter. Those who had managed to retain their excessive holdings now could sell at continually rising and profitable prices and retire into the nearby town and live the life of a rentier. Land values were pushed so high that new immigrants to the West had to proceed farther toward the setting sun or become tenants in Illinois or Iowa.

Though tenancy was doubtless still a temporary stage for many, the amount of capital required to own the necessary farm equipment, draft animals and other livestock, and to make improvements such as was required on Scully land in Logan and Grundy Counties in Illinois, made the tenant qualify at least as a petty capitalist. The fact is that as time passed tenancy was beginning to show signs of permanency, with some tenants being quite willing to remain in that status.

Glimmerings of the American Dream

It can be said that people planning in 1855 to develop a farm in the West—if they were willing to move into recently opened areas where land had not as yet been picked over by settlers and investors, and if they were not too seriously troubled about a remote location—could still acquire good arable land in Minnesota, Kansas, or Nebraska with a warrant or $200. If they preferred better located land and had a little more capital they could purchase tracts for $2 to $5 an acre, a price that within a decade would be regarded as low. There were abundant jobs on construction crews and in developing towns and cities. Wages were good. One could, as many obviously did, save enough in a year or two to get started on a farm as tenant or as a mortgaged owner, or could move farther west where government land was available. Those speculators who preceded settlers raised the cost of land for them. Those who entered land for settlers provided capital badly needed on the frontier, but at a high price. Some speculators developed their land, and all were interested in securing government aid for internal improvements for the West. The creation of a class of independent "yeomen farmers," was the goal that Jefferson had placed before the young Republic. They, not aristocratic landlords supported by tenant farmers, would be the stalwart defenders of democracy. By opposing the policy of authorizing individuals to purchase unrestricted quantities of government land, by urging settlers to take only such land as their resources would permit them to develop, and by favoring inalienable homesteads that would revert to the government on the death of the grantee, Horace Greeley also fought for this ideal. He feared that the policies the Nation had adopted up to this point would never achieve it.

CHAPTER X

Preemption

Preemption, the preferential right of a settler on public lands to buy his claim at a modest price, had been generally conceded—except in New England—to persons on the outer edge of the frontier by the time of the American Revolution. This privilege had not always been won easily, and only by vigorously resisting ejectment and fiercely demanding the right to acquire the land for a small payment or free, in preference to all others, had the settlers been victorious. If, unluckily, they found themselves on absentee-owned land and ejectment proceedings were brought against them, they insisted on payment for the value of all improvements they had made.[1] These two principles—the occupying settler's preferential right to buy the public land he had squatted upon and the right to the value of the improvements inadvertently made on private land—were carried wherever land-seeking pioneers went and were incorporated into the land systems of colonies and states and later into that of the Federal government.[2]

Laws Fail to Deter Squatters

The adoption of the revenue policy for public lands in 1785 and 1796 and the system of sales at auction meant that intrusions of squatters could no longer be tolerated. It will be recalled that serious but unsuccessful efforts were made from 1785 to 1791 to prevent squatters from taking possession of land north of the Ohio.[3] During the Jefferson administration Congress enacted severe laws forbidding intrusions on the public lands in Louisiana. Extreme care was taken by the United States to safeguard the property rights of residents in areas acquired from other nations, but persons found guilty of settling upon United States land in Louisiana territory were made subject to fines up to $1,000 and imprisonment not exceeding one year by the Act of March 26, 1804. Use of the Army to eject all such illegal settlers was authorized.[4] A second act, signed by Jefferson on March 3, 1807, increased the penalties for squatting and showed the government's determination to end the practice. This law was primarily directed against squatters moving on to public lands after its enactment. They were to be ejected by military force if necessary and to be subjected to fines and imprisonment. Squatters already upon public land were permitted to retain as much as 320 acres provided they registered at the land office and signed a statement that they claimed no right to the land, requested permission to continue as tenant at will, and promised that, whenever the land was sold, they would give quiet possession of it. Intruders who did not register their claims were to be proceeded against and, if convicted, could be fined $100 and sent to prison for

[1] For an examination of the legal aspects of occupancy laws see Paul W. Gates, "Tenants of the Log Cabin," *Mississippi Valley Historical Review*, XLIX (June 1962), 1 ff.

[2] Joseph Doddridge, *Notes on the Settlement and Indian Wars of the Western Parts of Virginia and Pennsylvania* (Wellsburgh, Va., 1824), p. 100.

[3] See Chap. IV, "Land Ordinance of 1785."

[4] Act of March 26, 1804, 2 Stat. 289; Clarence Carter (ed.), *Territorial Papers*, IX, 212.

6 months. Conviction was to be evidence that the offender had no squatter's right to the land.[5] This was a peculiar measure to be enacted by an agrarian-minded administration.

From the instructions of the Secretary of the Treasury concerning application of the act, it appears that its provisions were to be enforced most rigorously against intruders claiming titles from the Wabash and Illinois Companies and from other claimants in Indiana and elsewhere whose titles were based on questionable Indian grants.[6] The only action taken, so far as published documents show, was that 408 settlers west of the Pearl River were given permission to remain on their tracts, which were mostly 320 acres. The register went out of his way to assure them that they would be given preemption rights and even encouraged those who settled upon the lands after January 1, 1808, to believe that they would be given the same rights, contrary to the specific provisions of the law.[7]

Squatters could not have been prevented from settling on public land before it was offered for sale except by greatly limiting the area to be opened to settlement and by establishing a cordon of troops to bar entry. (Many years later the government did this in Oklahoma and on a number of other tracts of former Indian land being prepared for settlement.) But public opinion, especially western opinion, was hostile to both policies. Instead of limiting the areas being prepared for settlement, the government made every effort to induce the Indians to surrender their claims in both the Northwest and Southwest Territories. Also, surveying was pushed rapidly to make possible the opening of land to settlement. Orders for all squatters on the public lands to leave were quickly followed by political action to prevent enforcement. Congress gradually gave way to western pressures by relaxing the prohibitions and penalties against intrusions, then by enacting measures that forgave previous intrusions. For example, a proclamation of James Madison in 1815 declaring the government's intention to expel all persons illegally on public land in Indiana, led to such an outcry that Congress quickly passed an act making lawful the illegal settlements in that state. Ultimately Congress was to authorize intrusions first on surveyed land and later on unsurveyed land.

A House Twelve by Fourteen



Though both Federalists and Republicans in Congress accepted the necessity of using the public lands strictly for revenue, western landseekers were of a different mind. They saw nothing to justify withholding the Nation's abundant public land from settlement, nor to justify requiring settlers to purchase it and to pay considerable sums for small tracts. They were willing to compensate the government for the land, but only after they had wrung the purchase price from it by exploiting the timber, fur bearing animals, and soil. They had no real respect for the govern-

[5] 2 Stat. 445; *Annals of Congress*, 9th Cong., 2d sess., pp. 68, 671.

[6] 2 Stat. 446; Carter, *Territorial Papers*, VII, 444–45.

[7] *American State Papers, Public Lands*, II, 244 ff.

ment's title to these national resources. Despite prohibitions against intrusions, they continued to precede the surveyor and, before the public sale, to take possession of land wherever they found an attractive spot for a good farm or a site for a gristmill or sawmill. Because Congress had required the Treasury Department to give wide publicity to forthcoming public land auctions, squatters were greatly concerned about the possibility of speculators buying their claims. To prevent that catastrophe they sought a preferential right to buy the land on which they had made perhaps several years of improvements.

Age of the Petition

It was the age of the petition and memorial. Interested parties would set forth their reasons for favoring or opposing measures then under consideration, would secure many signatures, and induce the state legislatures to urge Congress to act. The petitions for preemption, sometimes filled with pathos and usually with marked dislike of the speculator, ran the gamut of emotion. An early one from near Kaskaskia, Illinois, dated May 23, 1790, said the Indians continued to kill members of the community, steal their horses and destroy their cattle, making it necessary for them to live in forts or in sickly villages on the Mississippi where they could not till the land.



A Bona Fide Residence

From A. D. Richardson, Beyond the Mississippi, *1867*

They humbly begged for the right of preemption to their improved land. Another petition from Ohio in 1798, signed by 85 men, spoke of their poverty which made it impossible for them to buy land at the "enormous prices it sold for." Having "left their friends and dearest connections," taken their lives in their hands "and faced danger and all the hardships attendant on the first settlers of an uncultivated frontier forest," they felt they deserved the right to preempt small tracts instead of having to buy from someone who had a quarter-township.[8] Other petitions for preemption rights deplored the necessity of buying land at high prices from greedy capitalists. Still others declared that the signers might have to abandon American territory and seek land in Spanish dominions unless preemption privileges were extended them.[9] One interesting petition signed by 32 men (including 10 members of one family) who had survived the ravages of war and had confronted the "ruthless savage with Intagerty & success Except the loss of property & friends" now asked for the right of preempting their claims. If not granted, and "our lands is taken from us by dint of oppulance" the signers urged the enactment of a law "to make such purchaseer pay us the full value of our Improvements . . ." A petition from Gibson County, Indiana, in 1816, was signed by "poor but honest Industrious hard laboring Citizens . . . who emigrated hither . . . with a view of finding an assylum from the tyrannical yoke of oppressive landlords." Unable to pay for their land on which all their rights had been forfeited they prayed for the privilege of remaining on it until conditions improved and they could again purchase, as a preemption, they hoped.[10]

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[8] Carter, *Territorial Papers,* II, 252, 639–40.

[9] *American State Papers, Public Lands,* I, 68, 111, 163, 201; III, 122 ff; *Annals of Congress,* 5th Cong., 1st sess., Dec. 24, 1799, p. 210.

[10] Carter, *Territorial Papers,* VIII, 281, 367, 368, 382, 389, 391, 393.

Special Preemption Privileges

Partly as a result of numerous appeals of this kind, and partly to quiet resentment against the extension of American control over areas previously Spanish, French, or British, 24 special acts were adopted before 1820 granting preemption privileges to special groups or within certain territories and states. For example on May 10, 1800, Congress granted to persons who had erected or begun to erect gristmills or sawmills north of the Ohio the preemption right to buy the sites on which the mills were located, up to 640 acres, at $2 an acre.[11] In an Act of March 3, 1803, persons improving and inhabiting land in Mississippi Territory were promised a donation of 640 acres and were given a preferential right to purchase an additional and seemingly unlimited amount of land on the usual credit terms. Three later measures extended the time in which such preemption payments had to be made.[12] Five special acts tried to correct the many errors of John Cleves Symmes by allowing a preemption right to those who had purchased land from Symmes for which he had no title.[13] Other measures of April 25, 1808, and February 15, 1811, granted persons cultivating land on rivers and creeks for a distance of 40 arpents extending back from the water the right to preempt an additional 40 arpents of back land provided they acquired no more than they held in their original grant from the predecessor government.[14]

Residents of Illinois and Indiana had a special claim on the government for leniency because the public lands along the Mississippi and Wabash Rivers were surveyed and brought into market only very slowly. The delay was caused by the numerous private land claims left from the period of French control; here, as elsewhere, it seemed to many to take an unconscionably long time to adjudicate and survey them. Not until 1804 was a land office opened in Illinois and not until 1814 was any public land offered for sale. Over the years small numbers of people had filtered into the area bordering the two rivers and made their improvements. Though they were intruders just as much as squatters elsewhere, there was much sympathy for these people as the land sales approached, because they had been on the land so long. When the matter was brought to its attention, Congress responded with a special preemption act authorizing every person who had actually inhabited and cultivated land in the two districts of Illinois Territory and who had not removed from the territory to preempt not more than 160 acres. They were required, however, to file their applications at least 2 weeks before the sale; if they failed to do so their right to the land was forfeited and it was to be put up at auction. Five additional acts passed in 1814, 1815, 1816 (two acts), and 1820 further liberalized the preemption privilege for settlers and extended the period in which the entries could be made.[15]

The liberal preemption privileges allowed Illinois and Indiana settlers in 1813 were extended to Missouri settlers on April 12, 1814. Private land claims had long held up surveys and sales of public lands in that state also, and indeed it was not possible to hold sales until 1818. To quiet the apprehensions of settlers long on the land, Congress granted all who had inhabited and cultivated land a right to preempt a quarter-section. The act

[11] 2 Stat. 78.

[12] 2 Stat. 229, 400, 447, 668.

[13] Act of March 2, 1799, 1 Stat. 728; Acts of March 3, 1801, May 1, 1802, March 3, 1803, and March 26, 1804, 2 Stat. 112, 179, 237, 280.

[14] 2 Stat. 503, 619, 640, 663, 711, 807.

[15] Act of Feb. 5, 1813, 2 Stat. 798; Acts of April 16, 1814, Feb. 27, 1815, April 27 and 29, 1816, and May 11, 1820, 3 Stat. 126, 218, 307, 330, 573. Solon J. Buck, *Illinois in 1818* (Springfield, 1917), opposite p. 52 has a map showing the entries of land in Illinois in the three land offices from 1814 to 1818, and says that the entire 8,837 acres sold at the Shawneetown office in 1813 were preemptions but does not give the acreage of preemptions thereafter.

must have seemed of dubious value, however, for there was no way of filing a declaration of intention to preempt until 5 years from the date of its enactment. Also, without surveys squatters could not be sure that their improvements were not included in large but unconfirmed private land claims; nor did it appear for a time that they could prevent people who held land scrip issued to sufferers of the New Madrid earthquake from claiming their improvements. Meantime, intruders were warned off public land and threatened with heavy punishment if they did not leave. If the promise of a preemption seemed empty for long years in Missouri, it appears that settlers were devising both honest and devious schemes to use the provisions of the act. The register and receiver of the Franklin, Missouri, land office wrote a fascinating letter, dated November 6, 1820, to Josiah Meigs, Commissioner of the General Land Office, defending themselves against politically inspired attacks on the grounds that they had permitted abuse of the Preemption Act of April 12, 1814:[16]

> We certainly required Cultivation for the support of a family & did not consider shelots which are indigenous to the country, or the marking of Trees, or planting a few peach Stones or sowing a few apple seeds or putting out a few Scions evidences of cultivation or the Encampment on the ground for a night 'actual Inhabitation,' where proof was offered of growing any Crop for the Sustenance of man, even 'Turnips,' it mattered not how they were put in whether with the plough, a cane or the hand it was deemed sufficient & the Preemption was granted.

Here are set forth some of the abuses which were later to be used by homesteaders trying to gain title without actually making a home on the land they claimed.

In 1816 Congress made general the provisions of an earlier act allowing any person inhabiting and residing on any public land not otherwise claimed to remain on it and to cultivate up to 320 acres after requesting permission and signing a declaration that he maintained no claim to the land. As a tenant at will, such an occupant was bound to give up the land when it was sought by another with a title from the government. The measure was extended for additional years on two occasions.[17] By temporizing with numerous special acts to meet pressing emergencies and by using the "tenants at will" dodge, Congress agreed to poor substitutes for preemption, showed its own confusion, its compassion for persons who might lose the work of many years, its susceptibility to lobbying, and its desire to avoid unpleasant decisions.

A report for February 14, 1816, shows that 211,864 acres had been granted by that date as preemptions. Of that amount, 93,719 acres were in Ohio, 117,051 in Mississippi Territory, and 1,094 in Michigan Territory. This compares with a total of 5,922,732 acres sold north of the Ohio and 582,968 acres sold south of the Ohio.[18]

Issues Formed

The many petitions and memorials asking for the extension of preemption to settlers on the public lands called forth hundreds of hours of debate in Congress and numerous reports from the House and Senate Committees on Public Lands. Members from the eastern states criticized the westerners for being greedy, lawless land grabbers who had no respect for law, order, absentee ownership of property, and Indian rights, no loyalty to the country, and no concern about what national and international difficulties their activities might produce. Constantly on the move, always looking for the main chance, they were careless about their obligations and reckless with lives and property. On the other hand

[16] Charles Carroll and T. A. Smith, Franklin, Missouri, Nov. 6, 1820, to Meigs, Carter, *Territorial Papers*, XV, 663.

[17] 3 Stat. 261. Most of these special preemption laws are briefly summarized, as well as those adopted between 1820 and 1835 in *H. Doc.*, 25th Cong., 2d sess., Vol. 9 (Serial No. 329), No. 303, pp. 4–7.

[18] *American State Papers, Public Lands*, III, 170.

the western Representatives presented the squatters as loyal people who had exhausted their resources in reaching the West and had defended the frontier against the Indians. They had commenced the arduous business of farm making and now, fearful of losing the value of their improvements to speculators, were petitioning for preemption. There was some truth to both stereotypes. Among the squatters were greedy landlookers spying out tracts they might claim and resell; at the same time there were many more who were struggling to survive and who, without preemption, might lose their claims and have to start anew elsewhere or become tenants of the purchasers of their claims. Preemption was becoming a major sectional issue, with Representatives of the public land states favoring, and those of the non-public-land states opposing it.

ACREAGE OF PREEMPTION ENTRIES, 1820–1829[a]

Year	Quantity	Mississippi	Louisiana	Arkansas	Florida	Alabama
1820	676	676				
1821	1,286		1,286			
1822	98,197		80,195	18,022		
1823	345		345			
1824	8,103		6,879	1,224		
1825	222			222		
1826	43,293		7,159	1,068	35,066	
1827	19,466				19,466	
1828	5,507				4,227	1,280
1829	2,622		320	326	1,976	

[a] *American State Papers, Public Lands*, VIII, 701. Data for other states is not available before 1830.

Preemption Act of 1830

In 1830 a general preemption measure cleared Congress and was signed by Jackson under circumstances that seem hardly credible. Senator Foote of Connecticut had introduced his famous resolution proposing the suspension of further surveys and the abolition of the office of surveyor general. It was immediately taken by Benton and other western men to indicate the desire of the East to slow down, if not to halt, the movement of population from the East to the West and to stop the rapid growth of the western states. Benton challenged the East for its selfishness, its continued provincialism, and its myopia concerning the real significance for the East of the growth of the West. Then speeches by Webster and Hayne changed the issue from a purely sectional one to a constitutional one. This aspect of the question so absorbed the attention of Congress, the editors of the *Debates* and local newspapers, that it tended to crowd out all mention of other issues. More important was the fact that Hayne was trying to cement the political ties binding the West with the South. Just at this moment a general preemption measure came before the Senate. If adopted, it would forgive past intrusions on the public lands and permit every squatter not on reserved lands to enter his land for $1.25 an acre. In ordinary times the bill might have aroused the lions of the Senate to prolonged debate and have been defeated in the end, but not so this time.

ACREAGE OF PREEMPTION ENTRIES 1830–1835[a]

Year	Total Acreage	Ohio	Indiana	Illinois	Missouri	Alabama	Miss.	Louisiana	Mich.	Ark.	Florida
1830	242,979	------	4,308	25,707	878	184,762	1,735	15,368	6,192	860	3,165
1831	557,840	27,046	36,163	15,560	2,992	427,717	17,359	21,885	2,237	3,686	3,189
1832	49,971	3,102	11,934	11,526	263	9,641	4,289	7,331	1,374	506	------
1833	31,756	----------		2,972	40	11,658	-------	11,701	693	4,690	------
1834	637,597	38	15,505	30,869	9,314	338,985	196,295	11,294	4,362	29,240	1,692
1835	574,936	---------	34,852	224,275	19,821	12,638	51,384	159,450	37,044	35,469	------
1836	112,842	---------	1,583	13,771	314	13,760	5,321	48,709	------	28,743	639

[a] *American State Papers, Public Lands*, VIII, 701.

Samuel Bell of New Hampshire began the brief discussion, as it appears in the *Register of Debates*, saying that to grant preemption to intruders would be to forgive and reward men who had violated the anti-intrusion laws, would encourage further violations of the Act of 1807 and would enable squatters to select the best land and leave the poorer land for buyers who attended public sales. David Barton of Missouri met the arguments by pointing out that the Act of 1807 was primarily directed against intrusions on the batture of New Orleans and was not intended to apply elsewhere, though it had been so applied and had created numerous hardships for settlers. Congress, however, had departed from the intent of this act many times in the numerous special preemption acts it had adopted. These special preemption acts had been helpful to the beneficiaries but their application had been limited and therefore discriminatory; the act under consideration, on the other hand, was intended to end all this discrimination by granting preemption rights to all settlers developing public lands before 1830. Without further discussion, and in the midst of heated debate on Benton's graduation bill and the far more exciting debate between Webster and Hayne, the Senate voted overwhelmingly for the bill, 29–12. Not a Senator south of Maryland voted against the measure. The opposition consisted of six Senators from New England, one from New York, two from New Jersey, two from Delaware, and one from Maryland. Webster and Hayne were not recorded on the vote and neither were the Senators from Virginia.[19]

Jackson's veto message on the Maysville turnpike bill on May 27 had created another storm of oratory in the House. This seemed again to deflect discussion from the preemption bill, which was rapidly adopted by a vote of 100–58. Foote's Resolution had greatly exacerbated western feelings and suspicions, and had brought the West and South into a temporary alliance that was responsible for an important victory for the West.[20]

The 1830 measure, although enacted for only one year and applying only retroactively, was the first general preemption act in that it allowed every "settler or occupant" on public lands who had been in possession and cultivated a part of his claim in 1829, to enter up to 160 acres including his improvements at $1.25 an acre. All such persons were therefore given preferential rights to enter their claims within one year from the date of enactment without having to bid for them at auction. Entry and payment were required before the auction sale. Assignments prior to the issuance of the patent were declared to be null and void.[21]

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[19] *Senate Journal*, 21st Cong., 1st sess., (Serial No. 191), Jan. 13, 1830, p. 83; *Register of Debates*, 21st Cong., 1st sess., p. 11.

[20] *House Journal*, 21st Cong., 1st sess., (Serial No. 194), May 29, 1830, p. 779; *Register of Debates*, 21st Cong., 1st sess., pp. 1138 ff.

[21] 4 Stat. 420.

Whatever the intention of Congress, the Preemption Act of 1830 was not interpreted to allow preemption of unsurveyed land and no procedure was provided for permitting special surveys in individual cases, as was done in California and other states at a later time. The Illinois Legislature complained in 1831 that because plats and surveys had not arrived at the land offices in time, a thousand settlers entitled to preemption under the Act of 1830 had not been able to gain title to their land. At the same time Joseph Duncan was saying in the House that there were 10,000 settlers in northern Illinois who were denied the benefits of the law because surveys had not been extended to that section.[22] Much the same situation prevailed in Arkansas where surveys had fallen well behind the vanguard of settlers pushing on to the frontier.

No appropriations for surveys had been made in 1830, though there was a carryover from the previous year's appropriation which permitted the work to go on slowly. As should have been anticipated, the Commissioner of the General Land Office complained that inadequate funds had prevented the surveyors general from examining and testing the accuracy of surveys and preparing duplicate plats and descriptive notes and had forced the postponement of many public sales. From the point of view of those who favored a wide-open West with surveys and public sales being pushed all the way from northern Michigan to southern Florida and Louisiana, the delay caused by absence of funds was unfortunate.[23]

Complaints about the pace at which surveys were being extended led to a good deal of argument in the House in 1831 concerning appropriations for the following year. Vinton of Ohio, now regarded by his western colleagues as a traitor to his section, argued for reduction. Surveys had been carried out far in advance of need, he declared; 10 times as much land had been surveyed as had been sold, and such a ratio reduced the price for which the government could sell its land. Such proliferation of surveys induced settlers to select only the best land and to scatter widely over a vast area. Clement Clay of Alabama replied that to reduce appropriations would ensure that settlers would scatter just the same over unsurveyed land, creating an ever-growing demand for preemption. Erastus Root of Delhi, New York—a community in the heart of a hilly, somewhat poor farming area where the land was mostly held on life leases by tenants who in a few years were to be involved in the anti-rent wars of the 1840's—was sensitive about the pull the West had for his constituents. Surveying so far in advance reduced the price of land, the consequence of which, he maintained, was "the strongest possible inducement for emigration to the West." The population is "sparsely scattered over the country" and the people "soon became semi-barbarians," he continued. Parochial arguments offered by men like Vinton and Root were met by John Quincy Adams, now a member of the House after having served as President. Adams contended that sales of land were increasing rapidly and that both surveys and additions to the staff of the General Land Office were essential for a proper functioning of the government's land policies. The proposed increased appropriations were not "at all extravagant," he felt. A combination of western Representatives and the more nationally minded members from the East carried the enlarged appropriation. An increasing number of eastern members of Congress were coming to see that western growth was not inimical to their section.[24]

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[22] *American State Papers, Public Lands*, V, 250; *Register of Debates*, 21st Cong., 2d sess., Jan. 1, 1831, p. 474.

[23] Annual Reports of Elijah Hayward, Commissioner of the General Land Office, Nov. 30, 1830, *H. Ex. Doc.*, 21st Cong., 2d sess., (Serial No. 206), Vol. I, No. 2, pp. 58–59 and Nov. 30, 1831, *H. Ex. Doc.*, 22d Cong., 1st sess. (Serial No. 216), Vol. I, No. 2, p. 61.

[24] *Register of Debates*, 22d Cong., 2d sess., Feb. 23, 1832, pp. 1853–56.

Under the Preemption Act settlers on public land that had already been offered had a year in which to make their entries and pay for the land. All offered land was open to entry at $1.25 an acre and the registers and receivers who accepted applications for such land were not careful to distinguish between entries made by residents entitled to preemption and others coming to the land for the first time and applying to buy it. For that reason we cannot fully determine the number of entries or the acreage under the Act of 1830. A tabulation of 1838 shows 472,131 acres as having been alienated under this act since its adoption; the larger part, 321,878 acres, was in Alabama and very likely the result of new offerings. The acreage, however, is not as important as the fact that Congress had taken a long step forward in freeing the settler from the hand of the speculator who, without preemption, could anticipate him.[25]

"Floats"

One feature of the Act of 1830 lent itself to abuse and made it more difficult for western Representatives to push later preemption measures through Congress. This was Section 2 which allowed two individuals whose improvements were on the same quarter section when the survey lines were run, to divide the quarter and take "floats" entitling each to enter an additional 80 acres. By means of these floats, many of which, it was charged, had been gained fraudulently, speculators were able to accumulate considerable areas of the choicest land, particularly in Louisiana and Mississippi. Only on unoffered land was the privilege of using the floats valuable, but surveys and the public offering of land in Louisiana were exceedingly slow and much highly desirable land near private land claims was not open to entry other than by floats.

One of the complaints which came to Congress and the General Land Office concerned an influential planter of Louisiana, Laurent Millauden, who was said to have spent $10,000 in temporarily establishing two Creoles on each of the numerous quarter sections he wished to obtain, buying out their rights for $5 to $50, and getting both the land and the floats. Since officials had declared that floats had priority over preemption claims, he was thus able to secure tracts that were in great demand. The informant declared that the planter thus gained ownership of land that would have brought $5 an acre at public sale and was worth at least $10.[26] A Mississippi planter frankly admitted that he and his brother made an improvement in common on a quarter section to secure floats under the Act of 1830. They had difficulty in proving up on their claim because of political rivalry with the register at the Chochuma office, and took the matter to headquarters in Washington. Among other things, they declared that they lived on the land only 2 or 3 weeks but kept their Negroes, oxen, and equipment on it and had a tenant on it who was obliged to pay them rent. Their contention was that the legislation under which they sought a preemption claim used the expression "settler or occupant," which covered them. It appears that they did not get the land. The use of tenants—strange that they appeared so early on the frontier—to hold or inhabit and improve land for the man who intended to preempt it

[25] *H. Ex. Doc.*, 21st Cong., 2d sess., Vol. I (Serial No. 206), No. 1, p. 67 ff.; *H. Ex. Doc.*, 25th Cong., 2d sess., April 5, 1838, Vol. 9 (Serial No. 3), No. 303, *passim.*

[26] Laurent Millauden is said in this letter to be acquiring land in Point Coupee parish. In the *GLO Annual Report, 1849*, he is shown to have acquired numerous tracts in Concordia parish that may have been as much as 5,760 acres. They were assigned to him by preemptors under the Act of 1834. Letter of Thomas Mullett Nov. 14, 1845, to James Shields, Commissioner, Commissioner's Files, GLO, National Archives; *H. Ex. Doc.*, 31st Cong., 1st sess., Vol. III, No. 5, Part 2 (Serial No. 570), Nov. 28, 1849, pp. 122 ff.; *American State Papers, Public Lands*, VIII, 538 ff., 610 ff., 949 ff.

(the tenant paid rent for use of the buildings and other improvements started by the original settler) was not altogether uncommon.[27]

Many complaints about the use of floats in Louisiana reached the Land Office, but most of them were vague and indefinite. The district attorney for the Western District of Louisiana wrote of the "most shameful frauds, impositions and perjuries" that had been perpetrated at the Opelousas land office. He ventured to say that not 30 honest preemption floats had been presented among the 350 which had passed through the office, yet he was chary with specific information. Aside from insinuations about Millauden and one or two small operators, the details are sparse. By January 31, 1836, 19,864 acres in Louisiana and smaller acreages elsewhere had been acquired by floats. What stands out is the complaint, frequently reiterated, that the floats made possible the transfer to private ownership of land that many had wanted to grab but only a few had gained.[28]

Elijah Hayward, Commissioner of the General Land Office, offered considerable criticism of the Act of 1830, stating that the law would be taken advantage of by occupants who would sell their privileges and then make other improvements for speculation. In other words, he believed the act would foster speculation by men of small means, whereas it was adopted to prevent capitalists from taking advantage of settlers by buying up their improvements at public sale.[29] Hayward's criticism was not well received by members of Congress from the West. Joseph Duncan, a Jackson Democrat from Illinois, protested against a government official's spreading the charge in the public report of his agency that settlers were speculating in the rights the act granted them. He doubted whether a single person had misused the act; if anyone had done so, it was to be inferred that the officials had not vigilantly exercised their authority to prevent sales before patents had been issued. Duncan went on to laud the settlers who went upon the public lands before sale, declared that in Illinois they had never been thought of as intruders or trespassers, and stated that the Act of 1807 had "never been regarded, except as a gross absurdity." He added: "From the passage of that resolution (1807) up to the present time, many of the most respectable persons in all the new States had been settlers on the public land. Most of them had commenced poor; they were generally a brave, hardy, and enterprising people, possessing an ardent love of liberty, freedom, and independence; who, so far from speculating upon the bounties of the Government, had on all occasions evinced the most disinterested patriotism and ardent love of country. . . ." Rather than the settler profiting from the government's bounty it was the other way around, for the settler gave value to surrounding land and made it sell.[30]

Further Preemption Measures

Once general retrospective preemption had been enacted, though only for a year, one thing was certain: the West would never again be content without (1) a series of annual measures to continue the policy or (2) a general prospective preemption measure. In

[27] Samuel B. Marsh, Sept. 14, 1834, to the Secretary of the Treasury, N Series, Letters to the Secretary of the Treasury, 1842, Treasury Department Files, National Archives. Also W. L. May, Feb. 10, 1836, to Levi Woodbury, Secretary of the Treasury, N Series.

Ethan Brown was so much alarmed by communications coming to him about the abuse of the float privilege that he sent circulars in both English and French to the Louisiana land offices warning of punishment for illegal action and ordering the local officers to make no final decisions concerning applications for floats. *General Public Acts of Congress respecting Sale and Disposition of the Public Lands with Instructions . . . on Questions arising under the Land Laws* (2 vols., Washington, 1838), vol. II, pp. 618–632.

[28] *American State Papers, Public Lands*, VIII, 627.

[29] *S. Ex. Doc.*, 22d Cong., 2d sess., Nov. 30, 1830, Vol. I (Serial No. 206), No. 2, p. 60.

[30] *Register of Debates*, 22d Cong., 2d sess., March 27, 1832, pp. 2268–71.

1831 and 1832 new preemption measures were before Congress. The one that caught the favor of members was a combination of provisions to reduce the smallest unit of land that could be purchased to 40 acres and to allow 80-acre preemptions to all "actual settlers being house-keepers upon the public lands . . . ." Making preemptions of 40 and 80 acres to men of small means seemed not very radical and the measure was adopted on April 15, 1832. In 6 years, 265,779 acres were entered under it, most of which were in Louisiana.[31]

Another act of the same year (July 14) gave preemption rights to occupants or settlers who had been entitled to preemption under the law of 1830 but could not make proof in time because (1) the surveys had not been made and returned, (2) the land claimed had not been attached to a district, (3) the land claimed had been reserved because of a disputed boundary, or (4) because the lands claimed were on fractional sections. A third important change adopted on January 23, 1832, allowed preemptors to assign or transfer their certificates of purchase and final receipts.[32] The first of these measures had no termination date and as re-enacted in 1838 and 1840 was invoked by Reuben Chapman, Alabama Congressman, for numerous residents on a tract in northwestern Alabama which had been ceded in 1835 by the Cherokees, and now had a dense population which was entitled to preemption under the Acts of 1838 and 1840. They had not been able to secure title because the plats had not arrived at the land office and now could not arrive in time for them to be notified and to make their preemption entries before their rights expired. Under the current interpretation of the Commissioner this would have ended the matter, but Chapman successfully contended that the Act of 1840 continued and extended the Acts of 1832 and 1838 and that all rights on land they were intended to concede were not destroyed by the expiration of the Act of 1838.[33]

The 40- and 80-acre Preemption Act of 1832 satisfied few settlers even though it might take them the better part of a lifetime to bring such an amount of land into productive farming. Nothing short of a quarter section would content the usual settler in the West. In 1834 it was proposed in Congress to re-enact the Act of 1830 and to extend its provisions to 2 years. Persons living on and improving land in 1833 would be entitled before the auction to enter, at the usual price of $1.25 an acre, a quarter section of land on which they had made improvements. By now Ohio was becoming assimilated into the eastern Whig point of view regarding public land policies. Samuel F. Vinton, a Representative of the region of the old Ohio Land Company, which had bought three quarters of a million acres to resettle with veterans of the Revolution, took the leadership in opposing further preemption privileges. He argued that preemption would benefit only speculators, that much of the land that would be taken under the bill was worth far more than $1.25 an acre, and that the government would lose heavily by it. James K. Polk declared that Vinton had been making this speech for 6 years and that it was based on misconception and misunderstanding. Advocates had only to point out that the average price of land rarely was much over the minimum and that, if anything, preemption would stimulate purchases. Horace Everett of Vermont observed that there were two types of combinations which tried to dominate the land sales: one was a combination of speculators trying to prevent all competition at the sale, the other a combination of settlers trying to prevent speculators from getting their land. Both were illegal. On this occasion, as earlier, the appearance of preemption bills in Congress induced some to talk about enforcing,

[31] 4 Stat. 503; *H. Ex. Doc.*, 25th Cong., 2d sess., Vol. 9 (Serial No. 329), No. 303, p. 7.

[32] 4 Stat. 496, 603.

[33] Chapman to the Secretary of the Treasury, April 18, 1842, N Series, Letters of the Secretary of the Treasury from Individuals, 1842, Treasury Files, National Archives.

or re-enacting, the Act of 1807. Joseph M. White of Florida met such talk by pointing out that the act had been directed against persons taking possession under pretended titles and not against ordinary settlers on the public lands. Joseph Duncan of Illinois again reminded the House that the act had been dead nearly 40 years, "had never, and could never be enforced," that all the numerous suits brought under it had been unsuccessful and that the government had been left with all costs. Congressmen followed the usual line expected of them and the bill, the most important of the general preemption measures up to this point, passed safely.[34]

Difficulties of Administration

All land statutes, no matter how carefully thought out, reconsidered, amended, and modified in the legislative process, called for even more carefully prepared instructions to be sent to the registers and receivers advising these officials how to apply them. It was in these rules for the guidance of the local officers that the Land Office seemed to lean over backward in rigidly interpreting the law. This was particularly true for the preemption laws. Francis S. Lyon, who was shortly to be elected to Congress from the Demopolis District of Alabama, was convinced that the Commissioner had been too rigid and too technical in his instructions concerning the Act of 1834, especially in ruling that the construction of a dwelling house on a tract was requisite to a preemption claim. Lyon pointed out that the statute authorized "settlers or occupants" to preempt land they cultivated and improved, and that to require actual habitation would rule out many of his constituents who lived on one side of the Tombigbee where the land was higher and better drained, and farmed on the other side which was productive though less healthy. Occupancy did not mean habitation, he maintained. Lyon also thought the Commissioner's rules were too technical in regard to preemptions on fractional tracts and the right of two settlers on fractional tracts to acquire floats. He was troubled because settlers who were on land they had improved in 1833 but sold in 1834 before the act was adopted could not actually pass a good title to the buyer, according to the instructions. Finally, he found that settlers who were on public lands in the fall and winter of 1833, had made preparation for a crop by grubbing out brush and making rails, but had planted nothing and did not plow until 1834 were denied preemption, whereas those who cleared, fenced, and plowed in 1833 would be so entitled. Several of the inconsistencies which Lyon pointed out were to arise constantly in General Land Office rulings and in the statutes of Congress.[35]

Preemption entries under the Act of 1834 were much more numerous than under the Acts of 1830 and 1832, doubtless because

Acres of Public Land Sold and Preempted[a]

Year	Total Sales	Preemption Sales
1830	1,929,734	242,979
1831	2,777,857	557,840
1832	2,452,342	49,971
1833	3,856,228	31,756
1834	4,658,219	637,597
1835	15,564,479	574,936
1836	20,074,871	112,842
1837	5,601,103	
1838	3,414,907	

[a] The acreages of sales are compiled from the *GLO Annual Reports;* the acreage preempted which is a part of the acreage sold is from *American State Papers, Public Lands*, VIII, 701. Unfortunately, after 1836 the Commissioner published no data concerning preemption entries, doubtless because the registers and receivers did not keep them segregated in such a way as to prepare the data for publication.

[34] The measure passed the House by a vote of 124–53. *Register of Debates*, 23d Cong., 1st sess., pp. 4469–73; 4 Stat. 678.

[35] F. S. Lyon, Demopolis, Sept. 13, 1834, to Levi Woodbury, Secretary of the Treasury, N Series. Letters from Individuals to the Secretary of the Treasury, 1834, Treasury Department Files, National Archives.

ACREAGES "DISCRIMINATED" AS PREEMPTION ENTRIES ON THE ABSTRACTS OF ENTRIES[a]

State or Territory	Act of May 20, 1830	Acts of 1832, 1833	Acts of 1834	Total
Ohio	1,966	2,917	3,079	7,962
Indiana	11,656	9,688	61,004	82,348
Illinois	34,093	14,425	335,358	383,876
Missouri	3,977	4,859	53,717	62,553
Mississippi	31,782	3,220	273,045	308,047
Alabama	321,878	3,823	331,119	656,820
Louisiana	34,446	206,452	378,678	619,576
Arkansas	12,443	20,224	154,062	186,729
Michigan	11,161	167	620	11,948
Florida	8,726		1,811	10,537
Wisconsin			41,400	41,400
	472,128	265,775	1,633,893	2,371,802

[a] *House Documents*, 25th Cong., 2d Sess., No. 303 (April 5, 1838), p. 7. Entries that might be made on offered land under these acts were probably not always "discriminated" as preemption entries, appearing therefore as cash entries.

A greater, but undeterminable, acreage was preempted than this table indicates, but the total of land passing to private ownership through preemption was small compared with the total acres of land being sold in these years.

emigration to the West was expanding, investment capital was flowing increasingly into western lands, and settlers, finding it easier to raise the necessary funds either through sales of surplus staples or by borrowing, were making greater efforts to gain title. Between 1834 and 1838, 1,633,898 acres were acquired through preemption under this act.

It should be remembered that much of the land in Alabama and Mississippi was never subject to preemption since it was either conveyed as allotments to individual Creeks, Choctaws, and Chickasaws, or was held in trust for them and sold for their benefit only at public auction or at private entry, without regard to preemption rights.

Understandably, the officials of the General Land Office were not altogether sympathetic to the preemption laws because they placed a greatly increased burden on the staff. Also, it was feared they would diminish income from sales and perhaps make it more difficult to secure additional appropriations for surveying and new staff. In his *Annual Report* for 1836 the Acting Commissioner, John M. Moore, observed that the Act of 1834 had the effect of delaying patents. Although the act made it clear that public offering of land at auction and the making of private entries thereafter were not to be held up by the working of the preemption privilege, it did create much difficulty for the Land Office which discovered that many tracts sold at private entry already had properly established preemption claims on them. No patents could issue during the 2 years preemption could be claimed. This delay was necessitated by the inability of the General Land Office and its regional offices to work out procedures whereby each entry on a tract of land could be speedily determined and duplication of entries avoided. The delay and confusion resulting from accepting duplicate entries was caused by the great rush of business descending upon the offices in the boom period of the middle thirties, by congressional penny-pinching in appropriating funds for additional staff, and by slowness in setting up adequate records.[36] The Act of 1832 with its 40-acre

[36] *S. Ex. Doc.*, 24th Cong., 2d sess., Dec. 1, 1836, Vol. I (Serial No. 297), No. 3, p. 5.

preemptions largely increased the number of tracts to be entered and checked upon the plats. Challenged and suspended applications increased alarmingly. The enormous burden the General Land Office had to carry in these busy years is shown by the data provided by the Commissioner in his report for 1837. Between December 1, 1836, and November 30, 1837, there were 216,784 entries of lands registered; 81,682 sales were waiting to be recorded. In the same period 135,000 land patents were issued.[37]

Ethan Allen Brown, Commissioner of the General Land Office in 1835 and 1836, worn out by the demands of Congress for information and by the tremendous burdens the enormous entries of public lands were creating for his staff, came out with a harsh indictment of preemption in January 1836. Though not quite a fair statement, for it was obviously penned by one who was not in sympathy with squatters on the public lands, it still has considerable substance. The use in Louisiana of the floats of the Act of 1830 bothered Brown most, for they were in such demand that many settlers conspired to gain them illegally. Members of the same family, urban residents, even slaves were used to swear to "artfully worded" depositions of joint occupation, and the planting of a few turnip seeds or peach stones, the burning of a small patch of cane, and the erection of a slight enclosure not entitled to be called a fence were offered as evidence of improvements. Brown's allegations were sufficiently supported by evidence to carry much weight but when he went on to anathematize the entire preemption policy he was on less certain and verifiable ground. The preemption privilege, he said, enables "the adventurer to appropriate to himself the choicest lands, most valuable mill seats, and localities for towns, at a vast cost to the public. . . . " He estimated that "outrageous combinations to intimidate purchasers, and other unjustifiable confederacies" had cost the government $3 million in loss of income from land sales. Here Brown was confusing claims clubs and speculators' groups with preemption.

Brown feared it was a hopeless task to draft proposals that would "silence perjury and defeat the devices of sagacious speculators . . . . " Other than fraud in the use of floats, he felt that the most dangerous aspect of the business was the "system of terror that threatens the competitor for the purchase of public land with the vengeance of the settler with whose usurpation he may interfere. In some quarters, this state of things is become formidable: probably finding its origin, in a great measure in the preemption laws, whose repeated enactment may have led the settlers to the erroneous persuasion, that they have acquired rights not given by law."[38]

[37] *S. Ex. Doc.*, 25th Cong., 2d sess., Dec. 9, 1837, Vol. I (Serial No. 314), No. 11, pp. 2–3. The unfortunate feature of the *GLO Annual Reports* while GLO was in the Treasury Department is that without exception they are concerned, almost to the exclusion of everything else, with the mechanical details of the office, the number of entries, the amount of correspondence, the number of miles of surveying authorized, the receipts from sales. Rarely did the Commissioner discuss the meaningfulness of the data he offered. In the thirties the only correspondence which is included is that of the surveyors general. In the report for 1840 this correspondence absorbs 92 of the 137 pages and it is likewise concerned with the minutia of surveying and not at all with the nature of the land and people found on it.

At the request of the Senate of Feb. 28, 1837 the General Land Office Commissioner prepared for publication copies of all general instructions sent out from his office and those sent from the Treasury Department instructing the registers and receivers how to administer the land laws and to deal with the many delicate questions arising under them. These were published under the title *General Public Acts of Congress respecting the Sale and Disposition of the Public Lands with Instructions . . . on Questions Arising under the Land Laws.* Vol. 2 contains the instructions and the opinions of the Attorney General. The instructions concerning the interpretation of the preemption laws are found in pages 539–654 but elsewhere in this big 1117 page book are numerous statements of the attorneys general resolving fine points of law concerning preemption rights.

[38] *H. Ex. Doc.*, 24th Cong., 1st sess., Jan. 28, 1836, Vol. IV (Serial No. 289), No. 125, pp. 2–6. Brown offered additional evidence of what he regarded as

If there had been no misuse of the preemption privilege and no resort to intimidation at public sales, Brown would still have been dubious about allowing the first settlers to select the "most valuable lands, and most desirable situations" at $1.25 an acre, because he felt this sum was well below the actual value. He abstained from appraising the over-all justification for preemption but did say that a 40- or 80-acre right was generous enough. He despaired of eliminating the many abuses in past measures:

> It seems to me a hopeless task to project any modification of existing enactments that shall silence perjury, and defeat the devices of sagacious speculators, so long as their ingenuity shall be sharpened and stimulated by the prospect of an immense gain attending their success. The conscientious will resort to no dishonest tricks, but the contagion of speculation is proverbial; and when an expectation may be entertained of obtaining, by indirection, for the lowest price, land worth from five to forty dollars per acre in the market, the inducement to perjury and fraudulent shifts will be too strong to be resisted, by many of weaker morality.

Brown thought that extreme liberality toward settlers might diminish the number of fraudulent cases by removing the motives for such practices, but he believed that the Intrusion Act of 1807 had brought public law into such contempt as to render any palliatives ineffectual until that act was repealed.[39]

The Commissioner's lack of sympathy for settlers on the public lands naturally won him no friends in the West, but Henry Clay found his report sufficiently helpful in his attack on preemption and squatters that he quoted from it in the Senate and allowed its strictures to carry him to a rare expression of hatred of settlers. Clay called preemption a "fraudulent, heartless, abominable speculation," a system that "putrified and corrupted all it touched." Squatters were a "lawless rabble." Clay's reckless and ill-timed condemnation of squatters, his opposition to preemption, graduation, cession, and to the removal of the 5-year tax exemption on public lands after sale, and his constant defense of speculators probably hurt him more in defeating his political ambition to be elected to the Presidency than his Raleigh letter of 1844 in which he tried to straddle the question of Texas' annexation. The West could not forget Clay's harsh castigation of that element of the population which it regarded as worthy of generous treatment by the government for its part in pushing the frontier westward. Nor could it forget that he had opposed measures most westerners regarded as essential for the development and prosperity of their section. Western papers kept before their readers Clay's denunciation of them as a "lawless rabble."[40]

Between 1834 and 1838 Congress had before it for consideration a stream of petitions and measures to provide preemption to all settlers on the public lands. An illustration follows:

> To the Honourable Body of House of Representatives We the undersigned, Citizens of Porter County & its vicinity, in the State of Indiana, most Respectfully represent to your Honourable Body in Congress assembled that Whereas much of the Public Domain in said County and adjacent thereto will probably be exposed to Public Sale the Present year, Induces your Memorialists to pray your Hon'ble Body that Some Steps may be taken, by which the Settler may not loose [sic] his improvements, his home, and his all. Experience have heretofore taught us that the Poor was indeed but the tool of the Opulent, that at the land Sale, at LaPorte but a few months Since to our Knowledge and deep regret, our Neighbours, fathers, Mothers, and little children, were turned off to the Cold hand of Charity by Speculators,

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fraud in the operation of the preemption law in *S. Ex. Doc.*, 24th Cong., 1st sess., Feb. 6, 1836, Vol. III (Serial No. 281), No. 230, pp. 17 ff. Also Letter of Brown to the Register and Receiver of Fayetteville, Ark., April 21, 1836, in "Preemption Bureau, Letters," Vol. 1, GLO Files, National Archives.

[39] *H. Ex. Doc.*, 24th Cong., 1st sess., Vol. V (Serial No. 290), No. 211, pp. 6–7.

[40] *Cong. Globe*, 25th Cong., 1st sess., Jan. 26, 1838, pp. 142, 143, and App. to the same, p. 134; *Iowa Territorial Gazette and Burlington Advertiser*, Oct. 26, 1839.

> those who have but little feeling in Common with the humble labourer that their improvements were taken from them their labour lost and their means Expended, the Settlers, ask but little, only a Quarter Section of land by which he may be enabled to support his family and Educate his children, to the end of which is our Parental duty, and for that end your memorialists will ever pray.

The petition, signed by 116 men, was transmitted through Senator John Tipton to the Committee on Public Lands which reported "That the prayer be not granted."[41]

In 1836 there was considerable support for making the Intrusion Act of 1833, which was primarily intended to prevent squatting on the Sac and Fox cession in eastern Iowa, applicable to other areas. Known lead deposits in the tract drew miners before the region was incorporated into a territory and before there were any officials competent to protect the lands from depredation. Consequently, Congress specifically applied the Intrusion Act of 1807 to the cession and authorized the Indian agents at Prairie du Chien and Rock Island to enforce it.[42] Efforts to revive the control of settlement were part of the maneuvering of the opponents of preemption. While this was going on, Clay was pressing forward his distribution and deposit bills to apportion to the states the net income from the sale of public lands. Whenever the western pro-settler element seemed on the verge of winning one of its objectives, it was good politics for the easterners to discourse on the degree to which the preemption laws were abused for the benefit of speculators and to advocate the distribution of the land sale proceeds to the states for internal improvements or aid for education. On the other hand, if Clay seemed on the verge of forming a coalition of the East, the old West, and the South strong enough to get a deposit bill or an anti-intrusion measure through Congress, the western egalitarians would enter into eulogies on the squatter—he was advancing the frontier, adding value to the public lands, creating new commonwealths with herculean labor and at great sacrifice, only to be faced with penury, the loss of his improvements, and tenancy because the speculator was threatening to obtain his land at the approaching auction sale.

Depression Increases Demands for Preemption

While Congress was considering these issues, public land sales reached their highest point in American history, Jackson issued his Specie Circular and the great crash of 1836 and 1837 occurred. Deposit, which Clay had carried to a successful conclusion, quickly ended with the disappearance of the surplus. The affluence which seemed to be extending widely in 1836 faded away as land sales abruptly fell off and the demand for produce shrank. The West was again in a depression.

Now the demand for preemption became stronger, particularly as extensive land sales had been ordered and capital was still being attracted from the East to invest in land. According to Robert J. Walker, who was in charge of the preemption bill in the Senate, many meritorious individuals would lose the labor of years unless preemption were promptly passed. He assured questioners that no floats, such as the Act of 1830 had allowed, would be given to settlers contending for the same quarter section. Opponents still thundered against preemption as "a system of partiality, plunder, and perfidy," partial to the new states and unfair to the old, and Clay took delight in reading the strictures of Ethan Allen Brown, the former Commissioner of the General Land Office. Walker replied that Brown was "wholly incorrect," that his views were founded on calumny and misrepresentation, the result of an anonymous letter.

Strong support for preemption came from the White House. Settlers had long since gotten into the habit of preceding the sur-

[41] Undated Petition in National Archives, referred to Committee on Public Lands, Feb. 16, 1836.

[42] Act of March 2, 1833, 4 Stat. 665.

veyor and the proclamation of sale, selecting land as they wished contrary to the intrusion laws, and demanding the right of preemption. As soon as one group of settlers was forgiven for past intrusions, others appeared farther out on the frontier. Respect for law was declining. Graduation of the price was Van Buren's remedy, but he felt that preemption should be granted first, then graduation, and then steps should be taken to guard against future intrusions. Van Buren's somewhat confused and less than frank discussion in his first annual message, with its erroneous statement that lands had been brought into market no faster than good lands had been wanted, "thereby preventing the accumulation of large tracts in a few hands," did, however, support both graduation and preemption. Democrats were in the saddle and by a vote of 30–18 in the Senate and 107–53 in the House they pushed through the Preemption Act of 1838. It was signed by Van Buren on June 22.[43]

The general Preemption Act of 1838 which had a life of 2 years allowed the right of preemption to every settler who was the head of a family, or who was 21 years old and in possession by personal residence on public lands at the time of the passage of the act; excepted were settlers on the Miami lands of Indiana, on the alternate reserved lands adjacent to canals, and on Indian lands. Complaints of the Land Office officials had thus induced Congress to tighten up on the requirements of the law to prevent persons from hiring others to establish a preemption right for them. However, in so prescribing conditions for preemption Congress was making more difficulties for the administrators who had to interpret these limitations, knowing that the legislators wanted a liberal interpretation to apply to actual settlers but not to parties attempting to take advantage of the laws to accumulate land.

Again there are no complete figures showing the number and acreage of entries under the Preemption Act of 1838, but Senator Clement Clay of Alabama produced statistics to the effect that in the 19 months following the adoption of the measure 752,972 acres were preempted. This was less than one-half the amount of land sold at auction in the same period and less than one-sixth of the amount sold at private entry. However, such an acreage would represent 9,412 preemption claims of 80 acres or one-half as many 160-acre claims.[44]

Van Buren attempted to analyze the results of the Act of 1838 in his annual message to Congress in 1840 but he offered little more than bland praise for the measure. It "has been attended with the happiest consequences in quieting titles and securing improvements to the industrious, and it has also to a very gratifying extent been exempt from the frauds which were practiced under previous preemption laws." Notwithstanding the fact that income from lands in 1840 was less than half that of 1839, he was convinced that it had "contributed liberally during the present year to the receipts of the Treasury."[45]

In anticipation of the lapsing of the preemption privilege accorded by the Act of June 22, 1838, the Senate on April 21, 1840, voted 26–9 to extend it for 2 additional years, and the House on May 26 approved the extension by 121–64.[46] The new measure further liberalized the preemption privileges by allowing settlers residing on one quarter section and cultivating another to acquire

[43] James D. Richardson, *Messages and Papers of the Presidents* (1904), III, 388–89. *Cong. Globe*, 25th Cong., 2d sess., Jan. 30, 1838, p. 191; *House Journal*, 25th Cong., 2d sess., June 14, 1838, p. 1101. Roscoe L. Lokken in *Iowa Public Land Disposal*, p. 83, makes a point of saying that Congress "again suspended for two years" the Act of 1807.

[44] Tatter, "Preferential Treatment," p. 333.

[45] Richardson, *Messages and Papers of the Presidents*, III, 537.

[46] *Senate Journal*, 26th Cong., 1st sess. (Serial No. 353), p. 329; *House Journal* 26th Cong., 1st sess. (Serial No. 362), p. 1031; 5 Stat. 456.

either tract. A troublesome matter of interpretation was how near the two quarters had to be, for Congress provided no guideline. It was also established that a person leasing a tract to another could preempt that tract.[47]

Claims Associations

By the thirties, combinations of settlers—claim associations—had been formed to assure orderly buying at most public land sales and to prevent speculators from overbidding or claim jumpers from buying the land of settlers. (Sometimes, as we have seen in the chapters on land sales, combinations of speculators had been formed to prevent competitive bidding among the members.) It is doubtful whether any important sales of public lands were held between 1835 and 1860 at which such combinations did not function, and almost invariably they accomplished their objectives. Since associations could prevent speculators from bidding against squatters, why did the West feel it so essential to have preemption laws?

The question was actually raised and partly answered by the *Burlington Hawk-Eye and Iowa Patriot* of February 25, 1841. It declared that the preemption law was unnecessary as people could ensure the same protection to settlers by neighborhood law. "To be sure, it is far better to have the law on many accounts as it legalizes a course which although universally in vogue, was in fact unlawful. . . . " The settler stood just as good a chance of securing his land without as with the existence of a preemption law. Later the same paper said the preemption bill under consideration in Congress would give less protection to the actual settler than the conventional or neighborhood laws did. It favored limiting the provisions of preemption to people having less than $1,000 of property for it feared that its principal benefit otherwise would go to men of substantial means.[48]

It is worth repeating that one of the most important functions of the claim associations, which were commonly organized in advance of the establishment of local government, was to provide a title registration system. According to such a system titles of claims—both before and after the public sale and until county government had been created nearby—could safely be conveyed, accumulated, divided, and even mortgaged, though the government title had not yet been conveyed. Common interests involving land ownership drew people together as nothing else did. It made possible the easy conveying and reconveying of parts of quarter sections when the settlers had created farm boundaries that did not coincide with government surveys that were run later.

Prospective Preemption and Distribution

In western thought preemption was a symbol of concern for the settler. Though he might not need it as much as in the past, he wanted the right of preemption as an indication both of government approval of him and of its disavowal of the Act of 1807 and other acts to prevent intrusions on the public lands. Preemption was a repudiation of the view that the government should encourage all elements wishing to acquire land to bid at

[47] For useful interpretations of some vexatious issues revolving around the preemption measures, see brief of Joseph H. Bradley, Dec. 6, 1842, and letters of William L. May, Feb. 10, 1836, and R. Chapman, April 18, 1842, to the Secretary of the Treasury, N Series, Letters to the Secretary of the Treasury from Individuals, 1836 and 1842.

[48] *Burlington Hawk-Eye and Iowa Patriot*, Feb. 25 and March 4, 1841. The Preemption Act of 1841 has sometimes been thought of as a frontier triumph, a great agrarian measure but the West, having already achieved control over the land auctions and eliminated the danger of speculators buying settlers' claims by its own devices would not have agreed. By 1841 the West was more interested in securing graduation, restrictions on speculative purchases, postponement of land sales, donation, and shortly thereafter free land.

land auctions. It was a preferential right at first won by the settlers and finally wholeheartedly granted to all retrospectively and, in 1841, prospectively. It marked another step away from the early revenue policy that was to culminate in free lands in 1862.[49]

Having won retrospective preemption in a series of measures between 1830 and 1840, the West's next objective was to gain permanent prospective preemption. Westerners had long felt that this was desirable as it would take the issue out of politics and would assure settlers moving on public lands that they would not have to wait for congressional action to protect them in their claims. Anything short of that goal was, like the measures of 1830 and 1838, a mere palliative. It was the western Democrats who sponsored preemption and who drew some support from Democrats of other sections; in opposition were Whigs such as Samuel F. Vinton of Ohio, a state from which frontier and western attitudes were receding, and the Clay men.

The victory of the Whigs in 1840 did not promise well for the advocates of prospective preemption. Harrison, though a mild advocate of land reform in 1800, had long since given up any such interest and in one of America's dreariest inaugurals, March 4, 1841, he avoided all pressing issues and mentioned land matters not at all.[50] His successor, John Tyler, disapproved of preemption. Henry Clay and other opponents continued their hostility, though somewhat less adamantly than before, and were prepared to bargain.

Walker and other western Democrats worked mightily during the lame duck session of 1840–41 to secure a permanent prospective preemption measure that they labeled the "log cabin" bill, hoping that the "log cabin and hard cider" candidate and his party would now fall into line in its support. In the next Congress their ranks would be depleted by losses in the 1840 election and if preemption was to be achieved in a satisfactory form it must be in this session. Benton and Walker were successful on February 2 in driving the Senate to a final vote, after an unusual Whig display of parliamentary maneuvering and harassing tactics designed to delay action. There were no Bentons or Walkers in the House, however, which failed to act, and the issue was left to the new Congress, strongly Whig in makeup.

Replacement of Harrison by Tyler in the White House did not enhance the hopes of the West for preemption, nor of Clay for distribution. Clay's anxiety to retain the tariff rates at a protective rather than a revenue level seemed to him to require that the public lands should continue to serve as an important source of public funds for the United States. The $1.25 price must be maintained, no concession should be made to graduation, and sales at public auction should be retained. When protective tariff rates and $1.25-an-acre land produced a surplus, he wanted to rid the Treasury of that surplus not by lowering either tariffs or land prices but by apportioning the surplus among the states on the basis of their representation in the Congress. Frustrated by Jackson's veto in 1833, by the Panic of 1837 and the disappearance of the surplus which forced the suspension of deposit, Clay in 1841 was pushing again for distribution, even though there had been a deficit the previous year and another, even larger deficit was looming for 1841. At the same time some Whigs were attempting to get through Congress a meas-

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[49] In his first annual message to Congress, 1837, Van Buren declared: "A policy which should be limited to the mere object of selling the lands for the greatest possible sum of money, without regard to higher considerations, finds but few advocates. . . . The government's leading object ought to be the early settlement and cultivation of the lands sold; and that it should discountenance, if it cannot prevent, the accumulation of large tracts in the same hands, which must retard the growth of the new states, or entail upon them a dependent tenantry and its attendant evils."

[50] Richardson, *Messages and Papers of the Presidents*, IV, 5–21.

ure to authorize the indirect assumption of state debts by the Federal government.[51] Democratic opposition and the view of some Whig leaders that such a policy would be disastrous kept the issue from gaining headway.

At this point Clay saw that distribution could not win in Congress without western support. He was willing to concede prospective preemption to the West in return for its aiding distribution. The two measures combined would retain the votes of the Representatives of most old states and win sufficient from those of the public land states. But to sweeten the pill even more, a provision was grafted onto the distribution measure to grant 500,000 acres for internal improvements to each public land state which had not already received such aid. As a final inducement, each public land state was to receive 10 percent of the net proceeds from public land sales within its borders. The balance of the net proceeds was to be distributed to all the states on the basis of their representation in the Congress and the public land states would have their respective shares of it. Other amendments proposed by westerners to graduate the price of land and to make all lands taxable the day they were sold were defeated. A final amendment insisted upon by the Tyler Whigs required that, if the tariff were raised above the 20 percent level, distribution should cease. In this form the Act of 1841 passed. It was a Whig measure opposed by most Democrats though it carried one of their dearest objectives—prospective preemption—along with aid for internal improvements. Distribution, they feared, would prevent graduation, cession, and sales only to settlers in the future, and besides they did not want to give credit to Clay for preemption. As matters fell out, the tariff was shortly raised above the 20 percent level and in 1842 distribution was halted.[52]

[51] Reginald C. McCrane, *Foreign Bondholders and American State Debts* (New York, 1935), Chap. 2, "Wanted: Federal Aid." On state debts B. U. Ratchford, *American State Debts* (Durham, N. C., 1941) is useful.

The Act of 1841

The Act of 1841 abandoned the view that all settlement on unoffered public land was illegal but sanctioned future settlement only on surveyed land. It was to take another decade before Congress was prepared to allow preemption on unsurveyed land and then it was permitted for a time in a few states only. The usual maximum of 160 acres could be claimed by settlers who inhabited and improved the land, erected a dwelling on it, and at the proper time paid $1.25 an acre. Persons eligible for preemption were heads of families, widows, or single men over 21, who either were citizens or had filed a declaration of intention to take out citizenship. Persons owning 320 acres or more and anyone "who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory" were ineligible. No one could gain more than one preemption under the act. Settlers on unoffered land were required to prove up and pay for their land at the opening of the public sale; those on previously offered land were to file declaratory statements either within 3 months after the passage of the act or within 30 days after they began their settlements, indicating their intention to preempt their tracts; and within 12 months they were to prove up and pay for the land. At that time they were to make oath before the register or receiver that they had never previously preempted under this act, were not owners of 320 acres, had not settled on the land to sell for

[52] Excellent on preemption is Roy M. Robbins, *Our Landed Heritage. The Public Domain, 1776–1936* (Princeton, N.J., 1942), pp. 72 ff. The House vote was 116–108 and the Senate vote 28–23. We may conclude that members voted yea or nay more because of distribution than preemption. *House Journal*, 27th Cong., 1st sess. (Serial No. 391), July 6, 1841, p. 222 and *Senate Journal*, 27th Cong., 1st sess. (Serial No. 389), Aug. 26, 1841, p. 216.

speculation, but had taken it up in good faith for their own exclusive use or benefit and had no agreement or contract to sell it to others. Although there was considerable talk about preemption replacing public sales, the act specifically stated that it was not intended to interfere with public offerings, which were to be continued as before.[53]

It was the intention of Congress that settlers on the surveyed portions of the public lands would never again have to worry about the legality of moving upon land before it had been offered at auction, and that land office officials, no matter how strongly they were influenced by the revenue concept of the earlier days, should not have to face the unpleasant task of curbing intrusions on surveyed lands. However, the Act of 1841 was only prospective, and where settlement prior to its enactment had been excluded by the restricted provisions in the Acts of 1838 and 1840, settlers still could claim no right of preemption. More restrictive was the limitation of the act to surveyed lands. Because preemption was not extended to squatters on unsurveyed lands, Commissioner Shields feared that when the lands were surveyed others could anticipate them, file preemption entries, and thereby gain the advantage of their improvements. Actually, problems over squatting, intrusions, and the use of force to repel unlicensed settlement were to continue to annoy the West and to make difficulties for officialdom for two generations to come.[54]

Another group of settlers who did not benefit from the Preemption Act of 1841 were those on 40-acre tracts. The act did not extend preemption to settlers on tracts of this size; that of April 5, 1832, had allowed squatters on these small tracts to purchase them, though only when they were offered at public sale. Shields feared that unless they were granted a preemption they would become tenants at will of the government or of large landholders.

Controversies over frauds involved in the issuance of floats under the Preemption Act of 1830 and the numerous conflicting claims of preemptors and purchasers at the public sales were not sufficient warning to Congress of the need to draft legislation with great care.[55] By 1842 the Commissioner was reporting that persons taking up preemption claims were stripping them of their timber and then abandoning them. It was found that while the Act of 1841 denied persons more than one preemption it did not prevent them from filing a second declaratory statement for a claim, removing everything of value from it, and then abandoning it. Also, where two persons were found to have established claims on the same tract, the law gave the right to the one who made the first improvement but it did not provide adequately that the first settler's right was also protected against his rival who might be the first to file his entry and pay the required price. Finally, it appeared that settlers were filing declaratory statements indicating their

[53] Act of September 4, 1841, 5 Stat. 456.

[54] This was brought out by James Shields, Commissioner of the General Land Office in his Report of 1845 in *S. Doc.*, 29th Cong., 1st sess., Vol. 3, No. 16 (Serial No. 472), p. 7. Shields was thoroughly caught up in the frontiersmen's conception of public lands, i.e., that every possible advantage should be conceded him in the administration of the lands and that speculator's rights should always be subordinated to them. In this same Report for 1845 he recommended that they be allowed to preempt an additional tract beyond the 160 acres to provide further needs for fuel and timber. This, he opined, would prevent "unscrupulous preemptors whose sole object is to speculate upon the necessities of settlers on the prairie" from entering the lands. *Ibid.*, p. 9. Shields also recommended graduating the price of land. Never again was there to be a Commissioner so sensitive of frontier policies toward public lands.

[55] In 1836 the Commissioner reported that the Preemption Law of 1834 was producing a regular flow of complaints and appeals from decisions of the local land officers, reaching 1,500 and seemed unceasing. *S. Ex. Doc.*, 24th Cong., 1st sess., March 2, 1836, Vol. III (Serial No. 281), No. 216, p. 2.

intention to preempt land but were merely holding it for sale to others.[56]

Two features of the Preemption Act of 1841 came into conflict, producing much correspondence and difficult questions for the administrative officers to adjudicate. Once a settler had filed his declaratory statement indicating his intention to improve and subsequently preempt a tract on which no anterior claim of any sort had been established, his claim transcended any other that might later be established before he had proved up and paid for his land, unless the land had been withdrawn for some purpose. Under the 500,000-acre grant for internal improvements, states naturally tried to select the best possible lands, as the settlers were doing. At one point it was even thought that the states might have prior rights in selecting lands, even lands on which settlers were established, but this reasoning was finally abandoned by the General Land Office. A number of states entered into agreements with settlers who were improving their lands by which the latter would relinquish their Federal rights and agree to purchase the lands from the states. The General Land Office declined to permit such a procedure, and the states were required to choose their land elsewhere.[57] Nevertheless state officers continued attempting to induce men who had already filed their declaratory statements to relinquish them and permit state selection. These efforts caused the General Land Office "much difficulty and delay."[58]

Abuses and Problems of Preemption

By 1847 Commissioner Richard M. Young directed Congress' attention to an ominous development in the use of the preemption law which was not to be ended until its repeal in 1891. Many persons were taking advantage of the law by filing declaratory statements on land subject to private entry, which permitted them to hold it for a year without making any improvements. During that time they might find a purchaser to whom they could sell a relinquishment, thereby anticipating later comers just as the larger capitalist speculators were doing. Actually, they were not allowed by law to file a second declaratory statement, but to enforce such prohibition was difficult. Possibly Young was a bit naive in suggesting an affidavit to indicate, when the declaratory statement was filed, that the claimant had made a bona fide settlement, and also "within thirty days after the commencement of such settlement, the requisite proof of such claimant's right. . . ." The General Land Office was ultimately to learn that no matter what proof of settlement and improvement was required, the procedures of the local land offices and their numerous responsibilities did not permit them to check up on such documents. Individuals were seldom caught in infractions of the land laws and even less seldom punished, though it was generally known that the laws were being extensively abused.

As proof that the law was being abused, Commissioner Young showed that in the Milwaukee, Green Bay, and Dixon land offices of Wisconsin and Illinois, 16,146 declaratory statements had been filed but only 418 preemptions had been made. He neglected to point out, however, that many entries may have started under the preemption law and ended up as simple cash entries. The failure of the General Land Office to require that entries started as preemptions should be carried over on the record books as final entries under the same law makes it impossible today, as it did for Commissioner Young in 1847, to determine how much of the land sold for cash was actually preempted. In his report for 1849 Young returned to the charge, saying that "not three in a hundred" declaratory notices were

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[56] *S. Ex. Doc.*, 27th Cong., 3d sess., Dec. 1, 1842, Vol. II (Serial No. 414), No. 10, pp. 84–85.

[57] *S. Ex. Doc.*, 28th Cong., 1st sess., Dec. 14, 1843, Vol. II (Serial No. 432), No. 15, p. 8.

[58] Richard M. Young, Commissioner, so reported on Nov. 30, 1847, *S. Ex. Doc.*, 30th Cong., 1st sess., Vol. II (Serial No. 504), No. 2, p. 17.

followed by actual sales, the parties generally moving off before their one year residence had expired.[59]

Meantime, several thousand preemption cases were suspended, leaving many people uncertain of their rights and disinclined to invest more in their claims until sure of ownership. In addition to the many cases involving the rights of a preemptor as against a cash purchaser, or two contending settlers, were those of settlers who had been entitled to a preemption under the Acts of 1838, 1840, or even 1841, but who had not prepared the required affidavits concerning improvements before they died. Under the law the heirs had no rights in the absence of such affidavits. Still another type of case not easy to solve involved settlers who unknowingly located on section 16, land reserved for schools. Under the Act of 1840 they were allowed to locate on any other quarter section in the same district on which no other person had registered a preemption. Settlers in this predicament could, and some did, file on other tracts but others who had improved their claims failed to file entry forms in time or were found not to have made the specific improvements the law required and therefore did not qualify for their substitute selections. The list of suspended entries was growing and threatening to overwhelm the General Land Office unless some way was devised to cut through the dilemma they presented.

In 1846 a bill was reported from the Committee on Private Land Claims to authorize a special board to consider and decide the estimated 5,000 cases of suspended preemption claims then pending. It was brought out in the discussion that some cases had been in suspension for 15 years. David Yulee, Senator from Florida, where there were numerous suspended claims, described one of the contested cases. A man made a settlement on land reserved for a private claim; when the private claim was allowed and surveyed, the settler's land was excluded from it; but because his settlement had been made on land reserved for consideration as a private claim, the Preemption Act of 1834 did not apply to it and neither did the later preemption laws. Yulee summarized some of the reasons for suspension:

> Entry was allowed without affidavit at proper time;
> Affidavit was not exactly formal;
> Entry was allowed before the plat was returned;
> Conflicted with private entries;
> Defects in plats at time of entry;
> Defects in description;
> Irregularity on part of register;
> Conflict with reservations;
> 40-Acre tract without affidavit.

In each case an irregularity in the proceedings, sometimes the fault of the officers, caused the suspension. In the past the only relief for these cases had been by a private act of Congress and a small proportion of the total ever got through the legislative mill. Some question was raised concerning conflicting claims and the application of the measure of 1846 to them was questioned. However, the measure as finally enacted was broad enough, it was thought, to cover all.[60]

[59] *S. Ex. Doc.*, 30th Cong., 1st sess., Vol. II (Serial No. 504), No. 2, Nov. 30, 1847, pp. 29 ff.; *S. Ex. Doc.*, 31st Cong., 1st sess., Dec. 3, 1849, Vol. I (Serial No. 550), No. 1, p. 20.

[60] *Cong. Globe*, 29th Cong., 1st sess., May 4, 7, 1846, pp. 754 ff. Other irregularities that caused suspension of preemption entries were the inclusion of four forties in two or three sections and the allowance of a preemption claim on a tract for which the treaty of cession had not been ratified at the time the preemption act was adopted. Lucius Lyon, Jan. 16, 1838, to C. C. Clay, Michigan Pioneer and Historical Society, *Historical Collections*, XXVII (Lansing, Mich., 1897), 498.

George L. Anderson delved into some of the papers of the Board of Equitable Adjudication of the later years for his "The Board of Equitable Adjudication, 1846–1940," *Agricultural History*, XXIX (April 1955), 65–72, but other than the emphasis upon the application of equity in cases involving disputes between the United States and the entrymen over intent and

(*Continued on page 242*)

The act authorized and empowered the Commissioner of the General Land Office "to determine upon principles of equity and justice, as recognized in courts of equity, and in accordance with general equitable rules and regulations, to be settled by the Secretary of the Treasury, the Attorney-General, and Commissioner, conjointly consistently with such principles, and to adjudge in what cases patents shall issue upon the same." The act was to be in operation 2 years.[61]

A report on the suspended claims shows that of 2,161 preemption entries, 1,266 private entries which may have started as preemption entries and 23 donation claims were approved for patent. Of the earlier claims which were assignable, an estimated 5,640 acres went to Laurent Millauden whose entries with floats were mentioned before, 6,240 acres to John Slidell, and 800 acres to Joseph Slidell. Thirty-eight preemption claims and seven private entries were rejected, one in Missouri, 13 in the Mineral Point district of Wisconsin where they were crossed up with mineral lands, 16 in Louisiana, and 15 in Florida. The Commissioner noted that the rejected New Orleans entries were "gross frauds," some of the land not being in existence, other land having been sold previously. The 15 rejected Florida claims, the Commissioner noted, "have ever been regarded as illegal and void," but were later patented "under the force of writs of mandamus issued by Judge Woodward. . . ."[62]

After all this experience in dealing with thousands of preemption entries, too many of which had become snarled in the inadequacy of the legislation providing for them, neither the Land Office officials nor Congress seemed able to draft a better measure than to extend the Act of 1846, first to August 3, 1849, and then to revive it on March 3, 1853, and to extend it for 10 years. Many in the West thought the officials were gagging at slight variations or exceptions; they were glad to see equity replace administrative uncertainty concerning the minute infractions, errors, or misjudgments based on ignorance of the requirements.

If Congress thought it had drafted a measure that would make possible the settlement of all suspended entries under the various preemption laws, it was wrong. Under the Acts of 1830 and 1834 the land officers at New Orleans had accepted various entries, the certificates for which had passed to third and fourth parties who had placed substantial improvements on the land over the course of the next 10 years, while waiting for the confirmation and patenting of their claims. It was said assurances had been given when the Act of 1846 was under consideration, that it would apply to those Houma preemptions, and that the present owners could expect to receive patents for the lands. Unfortunately for the holders of these claims the Board of Adjudication seems to have found distinctions between them and other types of suspended entries—perhaps because the original entries were fraudulent—so that they

ability to perform, he throws little light on the issues wracking Congress, the Land Office, and individuals and groups trying to gain ownership of land through preemption and other settlement laws. It would be interesting to know what accomplishments, if any, the Board may have made in the period of the greatest abuses in land entries.

[61] Act of Aug. 3, 1846, 9 Stat. 51. L. B. True, one of the numerous claim lobbyists in Washington, wrote to Cyrus Woodman, a very large speculator in public lands in Wisconsin, that he had helped get the Act of 1846 through Congress, was familiar with the procedure of getting preemption claims approved, and could learn of any changes through friends in the Land Office. He proposed to Woodman that they unite in an agency to rush through claims they represented and to oppose those not brought to their attention through Woodman. He estimated there were between 1,500 and 2,000 cases in the Mineral Point land district alone and thought the appropriate charge might be $100 for each preemption. L. B. True, Washington, D.C., Oct. 17, 1846, to Cyrus Woodman, Woodman MSS., Wisconsin State Historical Society.

[62] *H. Ex. Doc.*, 31st Cong., 1st sess., Vol. III, No. 5, Part 2 (Serial No. 570), Nov. 29, 1849, pp. 30, 68–131, esp. 230 and 231.

had not won the expected patents. The attorney for the Houma claimants argued that all were third parties who had long since bought from those responsible for the perversion of the law, had made valuable improvements, and that the government having received its price for the land should apply the relief act of 1846 to theirs as it was doing to other suspended claims.[63]

The entry business was slowed down by delays in extending surveys. These resulted from small congressional appropriations; cholera and other epidemics which made recruitment of staff impossible; wet seasons and harsh winters; destruction by fire of maps, plats, and surveyors' notes; delay in appointing and confirming land officers; inadequacies of the mails in transmitting instructions, copies of laws, and the plats; resignations, postponements, and suspensions of entries. Frequently settlers found that circumstances prevented them from proving up on their tracts for years. During such time, if they had filed their declaratory statements and no one was contesting their right, they could devote their resources to developing their claims. Such delays were vexatious to others but helpful to the farm maker, unless he wanted title in order to raise additional capital to improve his land more rapidly.[64]

One can find few indications of the use of the preemption laws after 1837. A block of Miami land, just south of Peru, Indiana, came on the market late as a result of the tenacity with which the Indians had clung to their land. Because there was great demand for the land and it might bring well over the government minimum at auction, officials decided to offer it at $2 an acre. In the three land offices at Winamac, Fort Wayne, and Indianapolis, 1,776 preemption entries were made in 1848, the year the land was opened to purchase. Another fragment of data concerns the preemption entries in Illinois from 1837 to 1845, but whether these were all the entries that started with a declaratory statement is not clear. These preemption entries contained a small part of the land being entered in Illinois, even in the poor years after 1839 when the one year of free use of the land permitted by the Act of 1841 would have been helpful.

PREEMPTION ENTRIES IN ILLINOIS, 1837–1845[a]

1837	270	1842	1,217
1838	337	1843	212
1839	281	1844	201
1840	139	1845	79

[a] These numbers were taken off the books by Stephen Strausberg.

A number of changes modifying and liberalizing the preemption privilege were adopted in the fifties. However, it was so well accepted that settlers creating a farm on the frontier should be able to buy it at the minimum price that none of the changes produced any discussion in the Congress or the bitterness that Clay and other opponents had shown earlier. Land reformers were now concentrating on graduation and free homesteads; the territorial question was causing heated, even angry debates; and both North and South were fighting to make Kansas tributary to their respective ways of life. One issue that might have produced debate seems not to have reached the floor of Congress. John Wentworth, or Long John, of Chicago wished to introduce a bill to amend the Preemption Act of 1841 so that settlers on the public lands would have more than a year

[63] Senator Henry Johnson, Feb. 13, 1847, to Robert J. Walker in A, E Series Executive Letters, Letters to the Secretary of the Treasury, GLO Files, National Archives.

[64] Illustrative of the delay is the case of Joseph Slater who began cultivating a tract of land, built a house, sowed some seed in 1837, and later hired a tenant to carry on the farming. Meantime, adverse interests appeared, preemption was suspended, and the case dragged on into 1842 allowing the use of the land for at least 5 years before he was required to pay for it. Joseph H. Bradley, Dec. 6, 1842, to the Secretary of the Treasury, N Series, Treasury Department Files, 1842, National Archives.

in which to make their payments after declaratory statements had been filed. "Our poorest class of people now hardly get their shanty built" before the year is up and they have to "hire their money at extortionate rates." Wentworth urged Justin Butterfield, the Commissioner of the General Land Office, to have his most experienced "Pre-emption clerk" draft a bill to extend the time for payment but did not fill in the length of the extension. The period of grace which Pierce and the early Buchanan were willing to grant might thus have been written into law had Butterfield and Wentworth pushed their proposals.[65]

When the Land Commissioner announced that settlers on alternate sections of land within the primary grant to railroads were not entitled to preemption even by paying the double minimum price, Congress rushed through a measure to reverse his Whiggish decision.[66] In 1853 it allowed settlers to pay for their double minimum land with military bounty warrants plus $1.25 an acre.[67] A measure of considerable importance to settlers in California and Louisiana allowed preemption rights to persons who had lived on and improved land withheld from sale because of a private land claim that was later declared invalid by the Supreme Court.[68] In 1854 Congress allowed settlers who had lived on and improved land, subsequently withdrawn from entry for a railroad land grant and then later released, to preempt it at the ordinary minimum price.[69]

Unsurveyed Lands Opened

More important than all these measures—in that its provisions were to affect a much larger number of people—was the action of Congress in 1853 authorizing preemption on unsurveyed lands in California for one year. (The land commissioners had been recommending for years that preemption should extend to unsurveyed lands everywhere, but Congress took no step in this direction until 1853.) Another important provision in this act allowed persons who had preempted land before to enter a second claim in California.[70] On March 1, 1854, preemption on unsurveyed land in California was extended for 2 additional years. Other newly developing territories and states were anxious to have the same privilege. On July 17, 1854, it was extended to Oregon and Washington Territories; on July 22, 1854, to Kansas and Nebraska Territories; and on August 4, 1854, to Minnesota Territory.[71] Not until 1862 was the right of preemption extended to settlers on unsurveyed public land in all states and territories. In that year, with the newly adopted homestead privilege available only on surveyed land and with the government officials following a general policy of not offering arable land suitable for farming at public sale, preemption took a new lease on life because it was the only route to ownership on unsurveyed land. For the next 30 years preemption was to be a major factor in moving land from government to private ownership in the Great Plains, in California, and in timbered regions of the Lake States and the Far West.[72]

During the years 1855–58 when the government was not pushing public lands onto the market and Buchanan was actually saying that they should be reserved for settlers, preemption had a marked revival. In parts of Iowa, Wisconsin, and Minnesota where the lands had not been offered at public auction, no private entry was permitted and the only way one could purchase land from the govern-

[65] Letter of John Wentworth, Feb. 27, 1850, to Butterfield, in Miscellaneous Letters A, GLO Files, National Archives.

[66] Act of Aug. 2, 1852, 10 Stat. 27.

[67] Act of March 3, 1853, 10 Stat. 244.

[68] Act of March 3, 1853, 10 Stat. 244.

[69] Act of March 27, 1854, 10 Stat. 269.

[70] Acts of March 3, 1853, and March 1, 1854, 10 Stat. 246, 268.

[71] 10 Stat. 305, 310, 576.

[72] Act of June 2, 1862, 12 Stat. 413. Section 3 of this act repealed the Graduation Act of 1854.

ment was through preemption. Of course in the offered areas, which had already been somewhat picked over, public lands were available for sale, but settlers, investors, and speculators preferred to make selections where they had a wide choice. In this short period, then, preemption rights became valuable, despite the fact that the unoffered land was generally less accessible. However, the Nation's economy moved downward in 1857 and the government's surplus of the earlier years turned into the biggest peacetime deficit the Nation had yet known. Thus the period of grace between settlement and purchase which Pierce and Buchanan had allowed was abandoned and 39 million acres were rushed into market to aid in reducing the deficit. Once offered at public auction the unsold land was subject to cash purchase in unlimited amounts, as it had not been before the auction, when only preemption claims could be established. Therefore, after the auction, the only incentive to use the preemption privilege was that once a person had filed a declaratory statement indicating his intention to prove up and take title, he had a year in which to raise the necessary $200 plus fees to pay for his claim.

Joseph S. Wilson, a longtime Land Office employee who became Commissioner in 1860, tried to cushion the shock to settlers caused by the demand for payment. He felt that a period of grace was necessary because settlers would not enter their land at land offices unless compelled to do so by the announcement of an approaching auction. In his report for 1860 he recommended that they be given 2 years between the filing of their declaratory statements and the date when they were required to make their payments. Wilson, like Hendricks before him, felt that the frontier preemptor had little incentive to use his capital to pay for his land while he was protected in his right to it.[73] Both recommended that settlers be required to pay for their land whether a public sale was announced or not. They also recommended a definite period of settlement and wanted Congress to fix the period at which payment should be made.

During the Lincoln administration there was a permanent moratorium on land sales in most newly surveyed areas except the timbered sections of northern Wisconsin and Michigan, a portion of southeastern Colorado, part of the Interior Valley of California, and considerable valley land in Oregon. Congress did not act on Wilson's recommendation until 1862 when the Homestead Act of June 2, 1862, made all public lands to which the Indian title had been surrendered subject to preemption, required settlers on unsurveyed lands to file notice of their settlement within 6 months after the survey, and to make their payment within 12 months after filing their declaratory statement.[74]

An ominous note crept into accounts of public land sales in 1859 when James Buchanan was trying to extract revenue from the frontier lands to relieve an unbalanced budget. At the Lecompton, Kansas, sale—which was angrily opposed by every faction in the territory, but without avail—it was reported that some speculators from a distance had hired people to preempt land for them instead of bidding for it themselves at the sale. This practice was to bring the preemption law into disrepute at a later time, and to lead to its final repeal in 1891 after repeated recommendations to that effect by Commissioners of the General Land Office.[75]

Preemption Passes Age of Usefulness

We may summarize the place of preemption in the history of public land policies

[73] *S. Ex. Doc.*, 36th Cong., 2d sess., Vol. I, No. 1 (Serial No. 1078), p. 72.

[74] 12 Stat. 410. By an Act of July 14, 1870, preemption claimants were required to make payment for their lands within 18 months after filing their preliminary application, unless some shorter period were required by law. 16 Stat. 279.

[75] *Kansas National Democrat* (Lecompton), July 21, 1859.

before 1862 in this way: (1) Preemption was a step toward freeing public land sales from the emphasis on revenue and toward achieving the West's ultimate objective of free lands. (2) It eased the anxiety of settlers before the auction, provided they could raise the funds to prove up and pay for their claims. (3) It allowed settlers moving on to public land after the auction a full year from the filing of their declaratory statements in which to make improvements and to raise funds for their purchases. Where postponement of the public sale was won, or where there was a long delay in bringing land to public sale, it provided an even longer period (until 1862). (4) The law offered a handy device by which a man could put his tag on a piece of land without making major improvements, and thus enabled him to speculate in a small way. (5) It lent a color of respectability and freedom from punitive action to persons cutting wood on public land for fueling the many steamboats plying the western rivers, and to small lumbermen logging in the pineries of Michigan and Wisconsin, where stories of "the big 40" have abounded ever since. (6) The necessity for requiring some form of proof that settlement and inhabitation had been carried out as the law prescribed, and the ease with which these conditions could be evaded by false testimony contributed to the growing disrespect for land law enforcement that reached its extreme in later years.

Throughout their history the preemption acts were abused by many people who acquired land fraudulently under them. They doubtless contributed to the accumulation of large holdings but it is too easy to dwell on this side of the story. Ethan Brown's indignant expose of the frauds in the use of "floats" in Louisiana and stories of misuse of preemption in the forties and fifties, combined with the irregularities in the administration of preemption after 1870, should not blind us to the constructive side of the story. Thousands of settlers moved to ownership of small farms through preemption of unimproved, even unsurveyed land. Preemption as a promise of preferential treatment for the settler put the government on the side of the farm maker, encouraged many who might otherwise have remained hired hands or tenants to move up the ladder of ownership, and, like free homesteads, was an inducement to migration, a factor accelerating the westward retreat of the frontier.

Almost from the inception of the new national government, preemption was the device through which the public auction with its competitive bidding was resisted and gradually made a mere formality. The auction system brought the government little or no increase in minimum price for land. It was retained long after it had become a useless and time-consuming method of opening land to settlement. First through special preemption acts, next through general acts applied only retrospectively, then by a general prospective measure applicable first only to surveyed land and later to unsurveyed land, the West won a series of victories over the opposition of the more conservative and revenue-minded representatives of the older states. But well before these measures were enacted the West had devised claim associations to accomplish its ends, that is, to make sure there would be no competitive bidding against local settlers and small speculators. In the South these associations protected the interest of powerful speculating land companies. The West was anxious to gain permanent prospective preemption as a shield and as a psychological recognition of the hardships its people were undergoing in pioneering but the practical effect of the Act of 1841 was not of great importance. It did give status to pioneer settlers and served as public notice that the harsh treatment of squatters was no longer to be tolerated. Squatting had come into its own as a legal and honorable step in the pioneering process toward farm ownership. Preemption was abused in the years before 1860 but on the whole the fraudulent operations made possible by the provisions of the Act of 1841 do not appear to have been

extensive or significant. They did lend support to Whiggish opponents of general preemption measures who exaggerated the stories of misuse.

After 1862, however, the situation was very different. The quantity of land proclaimed for sale, and thereafter opened to unrestricted entry, was limited and soon the practice virtually ended. For unoffered land, all entry laws had specific limitations such as 160 acres for homesteads, preemptions, and entries under the Timber Culture, and Timber and Stone Acts, and 640 acres for desert homesteads. It was only through these measures that unoffered lands could be acquired. Preemption then became subject to major abuse, as did all the other entry laws, which are discussed in the chapters on homestead. Finally in 1891, after numerous recommendations by Commissioners of the General Land Office and land reformers, Congress provided for the repeal of a law that had long since passed its usefulness.

CHAPTER XI

Military Bounty Land Policies

Until the late 19th century, American government at all levels was long on land and short on money, and for this reason uniformly preferred to use land to pay for services and to accomplish objectives that otherwise seemed impossible. In the Colonies land bounties or grants were given for a wide variety of purposes: in Georgia for a brick kiln, a pottery, a winery or an ashery; in Virginia for setting up a glass furnace; in Connecticut for growing grain; in Massachusetts for setting up salt and copper works and for "the building of roads and mills, and the protection of beaches and harbors" and throughout New England for education and support of the church. Most important were the land bounties given for the establishment of military outposts on the frontier and to soldiers who served in the various intercolonial and national wars.

Measure of Marked Impact

The military bounty was in fact a frank acknowledgment that patriotism, the emergency of the moment, and the wages the government offered were not sufficient to induce men in the numbers needed to offer their services. It was also an acknowledgment that land was not always easy to obtain, was much in demand, and that a land bounty might prove more attractive than anything else the government could promise. It was not intended as a land measure when offered in advance of service but was purely military. When given retroactively, it was a reward by a benevolent government anxious to repay the men for the risks and hardships they had undergone and essentially it was still a military measure. But all such measures had a serious impact on the region to which they applied. Four Colonies, including Georgia whose later experience is given below, offered grants to encourage settlement on the frontier for protection of the older areas against Indian raids, or as a reward for military services.[1]

In New England land bounties were promised to soldiers as early as 1675 to induce enlistments in the Narragansett War with King Philip and his Indian allies. Long years of delay in fulfilling the promise permitted the rights to fall into the hands of speculators, who finally succeeded in 1728 and 1734 in getting Massachusetts to grant them seven townships, or some 150,000 acres. Members of other military expeditions, such as the Canada expedition of 1690 and various Indian engagements, were likewise promised land bounties which were not fully satisfied until 1771. The delay and the location of the townships ultimately designated caused the

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[1] Lewis C. Gray, *History of Agriculture in the Southern United States to 1860* (2 vols., Washington, 1933), I, 329; Milton S. Heath, *Constructive Liberalism in Economic Development in Georgia to 1860* (Cambridge, Mass., 1954), p. 28; Oscar and Mary Handlin, *Commonwealth a Study of the Role of Government in the American Economy: Massachusetts, 1774–1861* (New York, 1947), p. 86; Amelia C. Ford, *Colonial Precedents of our National Land System as it Existed in 1800* (Madison, Wis., 1910), pp. 95ff.



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veterans to sell their rights to speculators for a trifle.[2]

In Virginia military land bounties were first promised by Governor Robert Dinwiddie's Proclamation of February 19, 1754. Two hundred thousand acres free of quitrents for 15 years were to be granted to soldiers who enlisted for the protection of the frontier. The land was to be laid off on or near the Ohio River and was to be distributed

[2] Roy H. Akagi, *The Town Proprietors of the New England Colonies* (Philadelphia, 1924), pp. 192ff. Massachusetts again resorted to promising land bounties in the Revolution. Modest grants of 100 to 160 acres were offered to be located in Maine, then a province of the Bay State.

to the men in accordance with rank and achievement. Next, by the Proclamation of 1763 the British Government ordered Virginia and other Royal Colonies to grant land "to such reduced officers as have served in North America during the late war, and to such private soldiers who have been or shall be disbanded in America; and are actually residing there" as follows: field officers, 5,000 acres; captains, 3,000 acres; staff officers, 2,000 acres; noncommissioned officers, 200 acres; and privates, 50 acres. The grants were to be free of quitrents for 10 years but were subject to the usual requirements concerning improvement and cultivation.[3]

Revolutionary Bounties

During the Revolution the United States and the individual states relied heavily on land bounties to attract enlistments. Although the Continental Congress had no lands subject to its jurisdiction until the cession of 1784, it nevertheless began at once to make promises of land. In 1776 it offered 50 acres to every Hessian who would desert to the American side. This may have been in retaliation for the earlier British offer of 200 acres, plus 50 for each member of the family, of those who would engage in the war on the side of the Crown. Later when Henry Hamilton, in charge of British forces in the West, offered a 200-acre bounty to each American soldier who would desegt to fight with the British, Congress offered British deserters rations for 6 weeks, some livestock, and a bounty of 50 to 800 acres depending on rank. The first general land bounty act, adopted by Congress on September 16, 1776, offered privates and noncommissioned officers in the Continental Army 100 acres; lieutenants, 200 acres; captains, 300 acres; majors, 400 acres; lieutenant colonels, 450 acres; and colonels, 500 acres. In 1780 brigadiers were granted 850 acres and major generals 1,100 acres.

In the absence of any lands over which Congress had authority it was assumed that the states would provide the lands thus promised. But what were landless states like Maryland to do?[4]

Fearing it might have to buy land to meet the bounty obligation to its men in the Continental Army, Maryland at this time moved to have the landed states cede all their claims to the National government,[5] a move that led to the creation of the public domain.

Virginia, the most populous of all the Colonies and the state with the largest extent of public lands—including present West Virginia, Kentucky, and the five states of the Old Northwest—was extraordinarily generous in granting land bounties to its troops in the Continental Army and to its state troops. It began modestly by offering to give every soldier, sailor or marine in state regiments 100 acres and to every officer the same bounties that were given to Virginians in the Continental Army.[6] The same year chaplains, surgeons, and surgeon's mates of Virginia regiments were allowed the same land bounties given to commissioned officers receiving the same pay. In 1779, the land bounty to officers was substantially increased and that to the men somewhat enlarged. Colonels were granted 5,000 acres; noncommissioned officers, 400; and soldiers and sailors who enlisted for the duration of the war, 200. As enlistments became increasingly difficult to procure because the supply of men was nearly exhausted, the bounty to soldiers and sailors who served to the conclusion of the war was raised to 300 acres and in addition each was promised "a healthy sound negro between the ages of ten and thirty years, or sixty pounds in gold or silver."[7]

In 1780 major generals and brigadier gen-

[3] William W. Hening, *Statutes at Large of Virginia*, VII, 622, 666.

[4] *Ibid.*, IX, 179; William T. Hutchinson, "The Bounty Lands of the American Revolution" (Ph.D. dissertation, University of Chicago, 1927), pp. 7ff.

[5] Hutchinson, "The Bounty Lands," pp. 7, 9, 17ff.

[6] Hening, X, 24, 26. Soldiers who were with George Rogers Clark in his campaign in the Illinois country were to have bounties of 200 acres.

[7] Hening, X, 160, 331.

erals serving in the Virginia regiments of the Continental Army were promised bounties of 15,000 and 10,000 acres, respectively, and all officers in either the Continental or Virginia regiments were granted an additional bounty of one-third of that previously promised. Finally, in 1782, all officers and men who served 3 years and had not been cashiered or superseded were entitled to have their respective bounties increased one-sixth for every year served beyond 6. The military bounty lands were to be located in the district between the Green, the Ohio, and the Mississippi Rivers in present Kentucky which was set aside for that purpose. When it became evident that the Kentucky district was not large enough to satisfy all the bounties, Virginia reserved, in its cession of lands north of the Ohio, the Virginia Military Tract between the Scioto and the Little Miami Rivers to take care of the balance.[8]

New York provided land bounties for its officers and soldiers in the Continental Line on a scale less generous than that of Virginia, perhaps because it had less land to distribute. Major generals were to have 5,500 acres; brigadier generals, 4,250 acres; colonels, 2,500 acres; majors, 2,000 acres; captains, 1,500 acres; subalterns, 1,000 acres; and noncommissioned officers and privates, 500 acres. In 1782 the state authorized the establishment of a military tract in central New York but not until 1789 were Indian rights extinguished and the tract ready for surveying.[9]

LAND BOUNTIES OF THE REVOLUTION

	Continental Congress[a]	Virginia	New York	North Carolina	Pennsylvania
Major Generals	1,100 acres	15,000	5,500	----------	2,000
Brigadier Generals	850	10,000	4,250	12,000	1,500
Colonels	500	5,000	2,500	7,200	800
Lieutenant Colonels	450	4,500	----------	5,760	----------
Majors	400	4,000	2,000	4,800	----------
Captains	300	3,000	1,500	3,840	500
Lieutenants	200	2,000	1,000	2,560	400
Noncommissioned officers	----------	----------	----------	1,000	----------
Privates	100	300	500	640	200

[a] Bounties given by the Continental Congress were in addition to those given by the states to its men in the Continental Line.

North Carolina, third of the states in population, had an abundance of land west of the mountains in what is now Tennessee, and granted the largest bounties to officers and soldiers of the Continental Line. Its first act promised 200 acres and a prime slave to every soldier who served for 3 years in the Continental Army; the land was to be located west of the mountains and north of the Tennessee River. In 1780 the bounty was increased. Privates were to receive 640 acres; noncommissioned officers, 1,000 acres; subalterns, 2,560 acres; captains, 3,840 acres; majors, 4,800 acres; lieutenant colonels, 5,760 acres; colonels, 7,200 acres; and brigadier generals, 12,000. In addition 25,000 acres, a "little dukedom," a Tennessee representative called it, was granted to General Nathaniel

[8] Hening, X, 55, 84, 375, 465.

[9] Wayne R. Merrick, "The Military Tract of New York State," Ms. Study, pp. 1ff.

Greene who had been responsible for the defeat of the British in the South.[10]

Pennsylvania, which always seemed to tie itself up in intricate legislation, passed a series of extremely complicated measures in 1780–85, providing land bounties for its soldiers in the Continental Army. The bounties ranged from 200 acres for fifers, drummers, and privates, to 400 acres for lieutenants, 500 acres for captains, 800 acres for colonels, 1,500 acres for brigadier generals, and 2,000 acres for major generals. Noncommissioned officers and privates were prohibited from selling their allotments until they had been "surveyed and laid off." The allotments were to be tax free as long as the grantees held them. A Donation Tract was set aside in northwestern Pennsylvania for the allotments and no other grants were to be allowed there. When surveyed, it was found that the tract contained sufficient reasonably good land to make 2,680 allotments totaling 616,500 acres. Pennsylvania opened its bounty land district to veterans shortly after the war and appears to have been most successful in settling them there—a contrast to the experience of the United States and Virginia with their military tracts.[11]

Georgia, constantly beset by Indians and with only a thin population from which to draw troops for its defense during the Revolution, was eager to attract men to its armed forces from its more populous neighbors. As early as July 12, 1776, it offered a bounty of 100 acres to everyone who would enlist in the military service for 3 years or until the war ended. Two years later the 100-acre bounty was promised for a period of service as short as 4 months and in 1781 it was increased to 250 acres and 10 years' tax exemption was promised. At the same time graduated bounties similar to those of the Continental Congress were offered which, as in other states, were to be in addition to the Continental bounty. In 1784 the tax exemption feature was commuted to an additional grant of 15 acres for each 100 to which the officer or soldier was entitled. Five hundred acre bounties were offered people from other Colonies who would settle on the Georgia frontier and serve in the militia when called. Families coming to Georgia were promised headrights of 200 acres for each member and 50 acres for each slave up to 10. The Governor was instructed to advertise Georgia's offer of land bounties and headrights and to send agents to other states to invite immigration. Some 750,000 acres were taken up by 1,700 veterans and a smaller acreage was given to immigrants from other states holding United States bounty rights. Georgia veterans did not have to wait to secure their lands as the soldiers of other states did; as early as 1784 one-fourth had located their warrants.[12] The state set off a military district in which the land bounties might be located but did not require that warrantees make their selections there. Land was abundant and the state's headright grants were most liberal. Probably the troops in Georgia won more land for themselves through headrights than they did through the military bounties. Military land bounties were offered again in 1787 during the Creek War. Soldiers and officers were promised

[10] Walter Clark (ed.), *State Records of North Carolina* (Goldsboro, N.C. 1905), XXIV, 337–39, 421, 783–86; *Register of Debates*, 19th Cong., 2d sess., Jan. 12, 1837, p. 677.

[11] For a brief history of the Donation lands, a map showing the tract and a list of the warrantees—the best known of whom were General Arthur St. Clair, later to be Governor of Ohio Territory, and Baron Steuben, Inspector General of the United States Army—see *Pennsylvania Archives*, Third Series, Vol. III, 577ff. St. Clair and Steuben each received 2,000 acres. Officers and soldiers were also offered some compensation for the depreciation in the Continental currency paid them in the form of certificates of depreciation that were accepted in payment for confiscated lands and for lands within a tract specifically set aside for this purpose just north of Pittsburgh. This Depreciation Tract contained 720,000 acres. The early sales in the Depreciation Tract brought about 27 cents an acre; the balance was held at 20 cents each. See an account of the Depreciation Lands in *Ibid.*, pp. 761 ff.

[12] Heath, *Constructive Liberalism*, pp. 78–79, 94–95.

640 to 1,500 acres of Creek lands which were expected to be made available by the successful conclusion of the war, but many obstacles prevented fulfillment of the promise and the state finally converted the bounty warrants into debt certificates at an exchange value of 34 cents an acre.[13]

Other states like Massachusetts and Connecticut granted land bounties to encourage enlistments but those which had little or no land to offer were forced to rely on money bounties. Before the end of the war these bounties had reached a high level. For example, South Carolina in 1779 offered a bounty of $500 for every volunteer in the Continental Line whose term was 16 months. A little later it agreed to pay $500 on enlistment and $2,000 at the end of 21 months of service, plus 100 acres of land.[14]

It was one thing to promise land bounties to soldiers and another to make that promise mean something. The Indians of the Ohio country, encouraged by the British retention of the posts after 1783 and by their continued support, if not incitation to hostilities, refused to surrender their claims to land north of the Ohio and defeated two armies led by Generals Harmar and St. Clair. Not until after Anthony Wayne's victory at Fallen Timbers in 1794 were they ready to cede the major part of present Ohio, which opened the way for peaceful settlement and the creation of a Federal Military Tract in which the promise of land bounties to soldiers of the Continental Line could be satisfied.

New York Promises Delayed

New York was not delayed quite as long as the Federal government in securing a tract clear of Indian titles for the location of its military bounties. An effort to create a tract on the east side of the Adirondack Mountains was abandoned early and in its place a more promising region was selected, extending southward from Lake Ontario and including most of the Finger Lakes. However, the Onondaga, Cayuga, Oneida, and Tuscarora Indians had claims to this area which they could not be persuaded to relinquish until 1789. This meant that during the 6 years following the conclusion of the war the veterans, whether officers or enlisted men, were denied access to the lands they had been promised. Meantime, the Indians were not using the land and squatters entered upon it, thereby causing much friction and difficulty later for the holders of the warrants and for state officers attempting to work their way through the confusion caused by the delay in securing the Indian title.

The new district was divided into 27, later 28 townships, theoretically of 60,000 acres, and each township was divided into lots of 600 acres. Six lots were reserved, one for religion, a second for schools, and four to compensate for land found to be under water. A 50-acre tract in each lot was to be held by the state until the cost of surveying—48 shillings—had been paid. Selection of lots was by balloting, carried out on January 1, 1791, and patents were distributed rapidly thereafter. Settlement was to be made within 7 years after the location of the claim or the land would revert to the state. Veterans who were entitled to 500 acres from the state and 100 from the Federal government could convey the Federal right to the state and receive a full 600-acre lot; those who had already conveyed away their 100-acre bounty were to have their lots reduced by that amount. In this way there were many 100-acre tracts left for sale.

It was 7 or 8 years after the conclusion of the war before owners of the bounties could locate their land and start farming operations, unless they determined to squat upon the land in the tract and hope they could

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[13] Heath, *Constructive Liberalism*, pp. 95ff.

[14] Ford, *Colonial Precedents*, p. 108; Edward McCrady, *The History of South Carolina in the Revolution, 1775–1780* (New York, 1901), pp. 299–300.

come to terms with the owner after the balloting. There was no way they could predict where their land would be located in a tract containing 1,680,000 acres. The average enlisted soldier was in need of money when he was discharged into civilian life in the midst of a marked period of depression. Consequently, most of them had to dispose of their military bounties long before they became available in the form of actual land. Of 2,045 officers and privates entitled to land, all but 158 of those who were living at the time the patents became available had conveyed their rights, not, it must be said, to members of their families, but to an astonishing degree to men who were speculating in the bounties, as well as in other tracts in New York, on an extensive scale. Among these large holders were Michael Connolly who acquired 169 lots of either 500 or 600 acres, Jeremiah Van Rennselaer who obtained 77 lots, and others including such well-known names as Van Cortlandt, Fish, Bayard, and Platt got from 17 to 88 lots. Forty-six holders controlled one-third of the tract. Although numerous ex-soldiers settled in the tract they came not as owners of a lot but as squatters or potential purchasers of land which had long since passed into the hands of speculators.[15]

The Virginia Military Tract

Public land administration in the Virginia Military Tract of Ohio was unique in that the United States kept ownership of the soil but permitted original grantees of bounties offered by Virginia, or their assignees, to select their land by the typical Virginia system of indiscriminate location and individual survey.[16] Holders of Virginia bounty warrants could locate their land either in the area set aside for this purpose in Kentucky or in the tract in Ohio, or they could locate part in each. After they had chosen the land they wanted in the military tract and were convinced it had not previously been entered, they turned over rough diagrams of their selections to the official surveyor—ultimately declared to be a Federal employee—who ran the lines, marked the corners by blazes or notches on trees or other impermanent devices. The description of such surveys was entered in the Survey Book of the Virginia Military Tract and a copy with the warrant was sent to the Secretary of War, or after 1812 to the General Land Office. There the patents were prepared and transmitted to the state office in Richmond which, in turn, delivered them to the grantees or their legal representatives.[17]

Searching out and surveying land for others was a regular business undertaken by men who received from a quarter to a half of the land as compensation for their services. Such men also had representatives

[15] I have drawn heavily upon Merrick's manuscript study of "The Military Tract of New York State," in my possession. The author used the *Balloting Book*, the deed records of three of the counties in the tract, and the appropriate state documents.

[16] Ohio's history of public land administration is marked by unique features. (1) It had the right, as had two other states—Virginia and Connecticut—to distribute the land in designated areas as it wished; (2) one of these tracts was surveyed into townships of 5 miles square, not 6, like the Federal public lands, and the other had no rectangular survey but reverted to the indiscriminate location and subsequent survey system of Virginia; (3) three parts of the Federal lands, the Seven Ranges, the Ohio Company lands, and the Symmes purchase had a system of numbering sections different from all other parts of the public domain; (4) sectioning of townships and division of sections in the United States Military Tract and in the Connecticut Western Reserve differ from that of other parts of Ohio; (5) section 29 in each township of a part of the Ohio Company lands and of the Symmes purchase was called ministerial land and reserved for religion and was subject to state management. Readers will find other unique features, but of less significance, in William E. Peters, *Ohio Lands and Their Subdivisions* (Athens, Ohio, 1918), *passim*. Similar legal studies for other states should be useful.

[17] Act of Aug. 10, 1790, 1 Stat. 184.

scouring Virginia for warrants, which they were usually able to purchase for very little from owners discouraged by the delays and difficulties in locating them. A fragmentary table of prices paid for warrants reveals individual sales in 1795 and 1797 at 20 cents an acre, in 1804 for as little as 10 cents an acre, in 1805 at 50 cents, in 1806 at 30 and 40 cents, and in 1807 for 30 cents to $4.00. The higher prices were doubtless for land, perhaps improved land, rather than for unlocated scrip. Many years later Virginia warrants again sold for as little as 20 to 30 cents an acre because there was either no land then available on which they could be located or the limitations on their use made them less valuable.[18]

Among the landlookers and surveyors who hunted up land in the Virginia Military Tract for others were Duncan McArthur, Nathaniel Massie, Lucas Sullivant, and Thomas Worthington, who all made fortunes in the business. To Nathaniel Massie were patented 75,285 acres; to Duncan McArthur, 90,947; to Lucas Sullivant, 68,785 acres; and to Thomas Worthington, 18,273 acres. James Taylor's 118,601 acres and Cadwallader Wallace's 118,315 acres were the largest holdings. The 25 largest acquisitions totaled 1,035,408 acres, or 26 percent of the entire tract.

The persons to whom these large acreages were patented probably never owned more than a fraction of their total acquisitions at any one time. They were essentially land agents, landlookers, surveyors, dealers, and to some extent developers of farmland, who also engaged in the town and city lot business. They took care of taxes on the lands they held for others, watched out for timber stealing, and perhaps most important, tried to induce squatters to become tenants, pay the taxes on the land they occupied, and sooner or later begin to pay rent. They were always looking for purchasers able to pay the price asked. Thomas Worthington, one of the best known and ablest of this group of land dealers, was twice elected United States Senator from Ohio, became Governor, built himself a fine mansion just outside Chillicothe in the center of his 1,500-acre estate, and at the time of his death in 1827 owned some 13,500 additional acres, though all were somewhat encumbered.[19] Duncan McArthur was several times elected to Congress, served as brigadier general in the War of 1812, was elected Governor of Ohio in 1830, founded Manchester and Chillicothe and "became immensely rich as a landlord."[20] Lucas Sullivant established himself on the Scioto opposite the site of modern Columbus and developed a large agricultural estate; his son Michael became the bonanza farmer of Ford County, Illinois. Thus did the opportunity of buying Virginia military land warrants cheaply lay the foundation of the fortunes of these Ohio statesmen. One may question whether the original grantees profited much from the bounty of Virginia and the United States.

It should be noted that tax delinquency early became a serious problem in the Virginia Military Tract partly because the owners of the large holdings overestimated their ability to carry the land and partly because they were uncertain when the lands became subject to taxes. After the Panic of 1819 so many tracts were tax delinquent that the Ohio Legislature agreed to remit the heavy penalties if the owners would pay the actual taxes as levied. Tax delinquency and tax title controversies added to the litigation resulting from the indiscriminate method of location, and to uncertainty as to the ownership of large areas of totally undeveloped land. These factors added to the costs of managing land for absentees. Tax titles alone had a mere nuisance value but if combined

[18] For a table of quotations see Hutchinson, "The Bounty Lands of the American Revolution in Ohio," p. 203.

[19] Alfred B. Sears, *Thomas Worthington. Father of Ohio Statehood* (Columbus, Ohio, 1958), p. 236.

[20] Henry Howe (ed.), *Historical Collections of Ohio* (2 vols., Cincinnati, 1900), II, 505–507.

with an occupancy claim with improvements they were a threat to the patent owner. After 1810 an Ohio law gave the occupant with a color of title assurance that in the event of action being taken against him by another having title superior to his, he could demand either the full value of his improvements or pay the litigant the value of the land minus improvements. McArthur was so badgered by tax titles, interest and penalties on the same, and by litigation presumably over occupancy rights, that he was almost ruined.[21]

Revolutionary War Scrip

Well before 1830 it became apparent that there were many more claims for bounty land in the Virginia Military Tract than there was good land available. Consequently, Congress, by an Act of May 30, 1830, authorized Virginia claimants, whether they were in the Continental Line or not (formerly only claimants who had served in the Continental Line were entitled to locate land in the Virginia Military Tract) to exchange their warrants for Revolutionary War scrip, which was essentially land office money. This scrip could be used to enter public lands which had been offered in Ohio, Indiana, and Illinois. Scrip to the amount of 310,000 acres was authorized to be exchanged for warrants. Two years later, Congress authorized an additional appropriation of scrip for 300,000 acres; in 1833 the amount was further increased by 200,000 acres and in 1836 by 650,000, making a total of 1,460,000 acres. The Act of March 2, 1833, removed the restriction on location. Finally, in 1852 the presentation of numerous claims persuaded Congress to adopt a general law permitting all claimants to Virginia land warrants issued before 1852 to exchange them for scrip.[22] In the next 9 years 1,421 warrants were exchanged for 940,903 acres in scrip, or an average of 662 acres each. By 1880, 2,520,269 acres in Virginia land warrants had been exchanged for Revolutionary War scrip. If we add this sum to the 3,669,848 acres of Virginia warrants located in the Virginia Military Tract plus an unknown amount acquired in Kentucky, we can see the dimensions of the problem that first Virginia and then the United States had in satisfying the extraordinarily generous promises the Old Dominion had made to induce and reward service in the Revolution.[23]

Since the Revolutionary War scrip could only be used to enter offered lands (after the auction), it was not useful to settlers wishing to preempt their lands before the auction, even though the scrip could be used by them thereafter. Neither could it be used to purchase Indian trust lands which came on the market in Alabama, Mississippi, and Kansas in the 1830's and 1850's. Also, since the scrip was in various amounts it frequently was presented in payment for smaller acreages without return of the difference. These limitations made it less valuable than money at the land offices and it was generally quoted at a substantial discount, invariably below $1.10 an acre. It was bought up by brokers, as were the military land warrants of 1847–55, and carried to the principal land offices in the West where it was offered to settlers and speculators.

Assignment records and entry books indicate that to a very large extent the scrip was used by speculators. One may search almost in vain to find small purchasers who were able to get any benefit from the lower cost of scrip entries. In 1834 the Commissioner of the General Land Office furnished Congress with

[21] Hutchinson, "The Bounty Lands," pp. 206–207. 1,400,000 acres were either tax delinquent or not found on the assessment role in 1824, but whether this applied only to the Virginia Military Tract is not clear.

[22] Acts of May 30, 1830; July 13, 1832; March 2, 1833; March 3, 1835; and Aug. 31, 1852, 4 Stat. 422, 578, 665, 770, and 10 Stat. 143.

[23] *H. Ex. Doc.*, 42d Cong., 2d sess., Vol. 1 (Serial No. 1505), p. 390; *H. Ex. Doc.*, 46th Cong., 3d sess., Vol. XXV, No. 26 (Serial No. 1975), p. 236.

lists of the assignees and the people to whom the scrip was delivered. On these lists appear Colonel James Watson (9,778 acres) who was the largest holder of land acquired with military warrants in Illinois; Philo Hale, a scrip and warrant dealer, land locator and speculator (37,316 acres of which 15,650 acres were entered in Illinois); Alvah Buckingham, one of the most extensive dealers in land from Ohio to Kansas (12,203 acres); Thomas Ewing, Senator from Ohio and later to be successively Secretary of the Treasury and Secretary of the Interior (9,000 acres). There were other large holdings amounting to 26,000, 28,000, 31,000, and 41,000 acres.[24]

The Act of August 31, 1852, by which the United States agreed to exchange scrip for all unsatisfied Virginia military warrants issued before that date, required Virginia to cede all claim to land in the military district. This Virginia did later the same year. On February 18, 1872, Congress ceded to Ohio the unsurveyed and unsold lands in the district and Ohio, then donated them to the Ohio Agricultural and Mechanical College which had come into existence as a result of the Morrill Land Grant Act of 1862. It was expected that these bits and pieces of land of very slight value—some 45,000 acres in all—would thus pass to the college. Enterprising officials of the college, however, discovered that numerous occupiers of land with rights to a certain acreage but no patent, had extended their boundaries well beyond the acreage to which they were entitled. The officials instituted legal proceedings to recover these unjustly claimed and enclosed lands, many of which were held by the Massie heirs. Again the defects of the system of indiscriminate location came to light. For years the college and the claimants were involved in expensive litigation that caused anxiety to all parties. These evils might have been avoided had the United States insisted on the use of the rectangular system of survey in the district.

[24] *American State Papers, Public Lands*, VII, 333ff.

First Federal Bounty Lands Located

Officers and soldiers of the Continental Army who were promised land bounties by Congress had to wait for their land even longer than the troops of New York and Virginia. Congress could do nothing until it had secured a tract in which the bounties could be located, though it should be said that the officers and men who had served throughout the war were at its conclusion given 5 years' pay in a lump sum.

In 1783, when the Continental troops were about to be disbanded, a pamphlet known as the "Newburgh Address" was circulated among them. It called for the creation of a new state in the Northwest Territory where soldiers and officers could exchange their warrants for land and for a time could enjoy the exclusive privilege of buying additional land. Coming at a time when the soldiers were restless and greatly irritated at the neglect of their wants, it caught their fancy and aroused much enthusiasm. Washington calmed their emotions and counseled patience. Men who had participated in drafting the plan were meantime consulting together about organizing the new territory being ceded to the United States by New York and Virginia and about methods of deriving revenue for the new National government from this land. Out of this ferment came the Land Ordinance of 1785, the Northwest Ordinance of 1787, a contract for the sale of 1,500,000 acres to the Ohio Land Company and an even larger quantity to the Scioto Company, which were drawn up even before the Indians in the territory had been brought under American control and persuaded to surrender their land.[25]

One-seventh of the million dollars the Ohio Company contracted to pay for its land could be paid in United States bounty land certificates receivable at $1 an acre. A similar provision was included in a sale being made at the same time to John Cleves Symmes. Both

[25] Hutchinson, "The Bounty Lands," pp. 58ff.

the Ohio Company and the Symmes associates failed to complete payments and actually gained title to much smaller acreages than they had bargained for: 892,900 for the Ohio Company and 272,540 for the Symmes associates. A total of 238,150 acres of military warrants were presented in payment for these lands.[26] Practically none of those who had turned in warrants to Symmes joined his colony; few of them received more than a pittance for their rights.

In 1787 Congress finally designated two tracts for warrant locations, one in Illinois and one in Ohio, but difficulties with the Indians prevented any further action and they were abandoned for this purpose. Some bounties were accepted in payment for land in the Seven Ranges but they were offered not by veterans but by others who had bought them at low rates.

Not until June 1, 1796, did Congress provide for the establishment of a military tract in Ohio on land to which the Indian title had been surrendered.[27] The reserve consisted of 2,539,110 acres. It was to be divided into townships 5 miles square, not 6 as the Land Ordinance of 1785 and the Land Act of May 18, 1796, required for other parts of Ohio. Only quarter-townships were available, leaving two choices to warrant holders: either they would have to combine with others to obtain land or they would have to sell their warrants.

During the long wait between the issuance of the warrants and 1800, when lots as small as 100 acres were finally made available, a large part of the rights—at least two-thirds—were assigned. In this way, according to a later report of the General Land Office, "many of the old soldiers were defrauded of their rights, and from this cause most of the litigation for lands in this district had arisen. . . ."[28] We may contrast this long delay in satisfying the promises made by the government during the war with the record of the British officials in Canada. In 1783 they received instructions from the British Colonial Office to grant each loyal citizen who had fled from the States 100 acres plus 50 acres for a wife and each child. Within a year the loyalists, not speculators or absentee owners, received the land whereas Americans had to wait at least 17 years and when the land was acquired, soldiers did not always receive it.

Although the rectangular system of survey was applied to the United States Military Tract, the provision that quarter-townships were to be the smallest unit led warrant holders to group together to make their entries and then to divide the 4,000 acres into farm units according to the lay of the land, thus approximating the indiscriminate locations of the neighboring Virginia Military Tract.[29]

The long delay, the impossibility for holders of 100-acre warrants to use their rights unless they could find some way of cooperating with others, and the need to capitalize upon their rights, forced many to sell when the demand was low.

Hutchinson found that the warrants sold for 5 to 10 cents an acre in 1793–95, rose to 30 cents in 1801 and to $1 in 1809. These figures are based on single warrant notations and doubtless the price fluctuated from community to community, but it does appear that in the early period the soldiers profited little from their warrants.[30] That they sold for so little helps explain why public land held for $2 an acre in the Seven Ranges or elsewhere in southern Ohio attracted so few buyers. Only the advantage of location could have persuaded people to pay this price when land

[26] Archer Butler Hulburt, *Ohio in the Time of Confederation* (Marietta, Ohio, 1918), *passim*; Hutchinson, "The Bounty Lands," p. 94.

[27] *Annals of Congress*, 4th Cong., 2d sess., 1796–97, p. 2935.

[28] *S. Ex. Doc.*, 30th Cong., 1st sess., Vol. II, No. 2 (Serial No. 504), p. 23.

[29] Hutchinson, "The Bounty Lands," pp. 139–40.

[30] *Ibid.*, p. 156. It is doubtful that the warrants ever brought in a bona fide sale more than $1.15 or $1.20 an acre.

or warrants for location in the military tracts were selling for so much less.

Ownership of land in the United States Military Tract became concentrated in a few hands just as it did in the military tracts of New York and Virginia. The largest amount of land was acquired by Jonathon Dayton, an associate of Symmes and a persistent speculator. As a member of Congress, Dayton had tried to make the military bounty warrants acceptable for public lands, which would have enhanced the market value of the warrants. Dayton entered 23 quarter-townships or 90,936 acres with military bounty warrants. Symmes himself entered 36,000 acres and Mathias Denman, who had cooperated with Symmes in founding Cincinnati, entered 40,000 acres. One hundred and fifteen individuals and partnerships acquired 1,043,000 acres, 70 percent of the area open to quarter-township entries. Apparently the greater part of the 100-acre bounties given to privates were acquired by or made a part of the quarter-township entries.

The administrative history of the United States Military Tract, like that of Ohio generally, is anything but simple. Of the lands in the tract not acquired by warrant holders, the Federal government granted 18 quarter-townships of 4,000 acres each for schools, presumably to be administered by the state, and 55,000 acres for schools in the Connecticut Western Reserve, and provided for the survey and sale of the remaining unappropriated lands in 320-acre lots. After 1832 no further entries with military warrants were permitted in the tract. Instead, holders became entitled to receive scrip that could be located elsewhere in Ohio, Indiana, or Illinois on land subject to private entry, as holders of Virginia military warrants were entitled to do.[31]

A third, but very much smaller land district was created in Ohio to satisfy refugees from Canada and Nova Scotia who had to flee during the Revolution because of their support of the American cause. A tract of 100,000 acres just south of the United States Military Tract was set aside for them in 1783 and 1785. Sixty-seven claimants were given land in this tract, the selections being by lot, for a total of 58,080 acres. The size of the grants was not originally determined by Congress but later was made dependent on the services of the refugees to the United States and presumably on their losses. Again there was an unconscionable delay in getting the land into the hands of the claimants. It took six measures, in addition to the original promise of aid, to tidy up all claims and to provide land elsewhere for some of the claimants after the balance of the district had been disposed of. As late as 1847 the Commissioner of the General Land Office stated that some of these claims and locations "had been strongly litigated by adverse claimants, on the ground of frauds, and causes other than conflicts of entries." It was a rare case where Congress, in trying to aid small groups by land grants, did not involve itself in much subsequent trouble involving continued applications for relief and additional aid, numerous committee reports, and further legislation.[32]

Residents of the military tracts had much to complain about: the high tax delinquency characteristic of absentee- and speculator-owned land, the slowness with which some parts of these areas developed because the owners were withholding land for high prices, the alarming amount of litigation between squatters and absentee owners, the growth of tenancy, and the poor class of improvements frequently found on land that had a background of absentee ownership, tax delinquency, and title litigation.

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[31] In the Act of 1796 to create the tract Congress had donated 12,000 acres to Moravian missions which had worked successfully with the Indians.

[32] Peters, *Ohio Lands and Their Subdivision*, pp. 284ff., and map on p. 286; *S. Ex. Doc.*, 30th Cong., 1st sess., Vol. II, No. 2 (Serial No. 504), p. 24.

Pattern of Ownership

A natural question is whether the concentration of ownership that existed from the very beginning in the counties of the two military tracts of Ohio had any effect upon the later pattern of ownership and the proportion of owner operated farms to those that were tenant operated. No categorical answer can be given. In the first place, few counties were wholly within one or the other of the tracts. Secondly, other factors such as the amount of speculation in other counties and the grants of public land for the construction of canals and roads played a major role in shaping subsequent ownership patterns. Yet some results of this early concentration of ownership are apparent. On his tour through the Virginia Military Tract in 1807 Fortescue Cuming was impressed with the "elegant stone house" of Colonel McArthur, the "neat house and handsome improvement" of Henry Massie, and the "elegant seat" of Thomas Worthington. He also observed that the area was thinly settled because the lands "belonged to wealthy proprietors, who either hold them at a very high price, or will divide them into convenient sized farms." Twelve years later David Thomas, traveling through the same region, wrote that some of the finest land was undeveloped, that for miles he saw no houses, and that the irregular method of laying out farm boundaries had been a constant source of litigation "of the most baneful consequences." Though he was making the trip to seek out land for speculation he was troubled by "the evils of monopolizing wealth" he found so extensive in the tract. He noted one farm of 2,100 acres which was operated by tenants who paid 15 bushels of corn per acre in cultivation. The "unsettled state of titles" deterred him from making any investment in the tract. Thus tenancy came early to Ohio.[33]

William T. Hutchinson, summing up his detailed study of the military bounty land policy of Virginia and the United States, wrote that "Tangled land claims, uncertain boundaries, sales for taxes and lawsuits crowd the history of the District. Large holdings, absentee ownership and tenant farming were the rule, and towns often arose, or vegetated upon papers, as a part of the efforts of the speculators to increase their profits or mitigate their losses."[34]

The United States Census of 1860 and 1880 show statistical results of the concentration of speculation and land ownership in the military tracts. In 1860, out of 88 counties, seven wholly or partly within the military tracts contained 58 percent of the farms over 1,000 acres and 38 percent of the farms of 500 to 1,000 acres. Two decades later the same counties still had 35 percent and 23 percent of these two classes of farms. In 1880 the percentage of tenant operated farms in Ohio was 19 whereas in Madison County wholly within the Virginia Military Tract 51 percent were tenant operated; Madison County contained the greatest number of large farms of all the counties. Fayette County, also within the military tracts had 37 percent of its farms tenant operated and 11 large farms. Pickaway County had 32 percent of its farms tenant operated and 19 large farms. Franklin County, which contained the home farm of Lucas Sullivant, had 31 percent of its farms tenant operated. On the other hand, Ross County, the home of Nathaniel Massie and Thomas Worthington, had 19 large farms, the highest average size of farms of all counties, but had only 19 percent of its farms tenant operated. The average size of farms for all seven counties in the military tracts was 129 acres as compared with 99 for the state; the percentage of tenant operated farms was 27 as compared with 19. Other factors doubtless

[33] F. Cumming, *Sketches of a Tour to the Western Country Through the States of Ohio and Kentucky*, reprinted in Reuben Gold Twaites, *Early Western Travels* (32 vols., Cleveland, 1904–07), IV, 212–15; David Thomas, *Travels through the Western Country in the Summer of 1816* (Auburn, N.Y., 1819), 97–98, 104.

[34] Hutchinson, "The Bounty Lands," p. 248.

entered into the making of this correlation between the early concentration of ownership and the degree of speculation in land and the later number of large farms, the high average size of farms, and the high proportion of tenant operated farms.[35]

War of 1812

Long before the obligations to veterans of the Revolution had been satisfied and the warrants to which they were entitled located, a new crisis arose in American relations with Great Britain. A new war emergency appeared and new armies were needed. McMaster has shown how reluctant people in New England were to enlist and how slow a process generally it was to fill up the regiments Congress authorized. Believing that the Revolutionary land bounty had been effective in stimulating enlistments, and not troubled by the effects of the concentration of ownership in the military tracts, Congress returned to this device but only for noncommissioned officers and soldiers. In fact, Congress did not wait for the declaration of war to draft plans for building an effective army.[36] As early as December 23, 1811, and January 11, 1812, it had passed two measures for the creation of new regiments and offered a $16 cash bounty and 160 acres to every man who would enlist for 5 years, or later, for the duration of the war.[37]

Instead of making the warrants subject to location anywhere on the public domain, as might have been expected because of the unfortunate experiences in the two Ohio Military Tracts, Congress authorized the creation of three new military tracts: one in Michigan Territory, but with location unspecified, one in Illinois Territory between

[35] Paul George Minneman, *Large Land Holdings and Their Operation in Twelve Ohio Counties* (Ohio State University, 1929), successfully skirted around the Ohio Military Tract and offers no information on large farms in the tract in his otherwise interesting statistical analysis of large farm holdings in excess of 500 acres.

[36] John B. McMaster, *History of the People of the United States*, III, 541ff.

[37] 2 Stat. 669, 671; *House Reports*, 21st Cong., 2d sess., March 1, 1831 (Serial No. 210), No. 103, *passim*. Perhaps it was the size of the military bounties given officers of the Revolution and the large estates they had made possible that discouraged Congress in 1811 from offering any land to officers. Whatever the reason for this discrimination, the officers were not content with this neglect of their claims.

Before the war was over a measure was introduced to give major generals 2,560 acres, brigadier generals 1,920 acres, colonels and lieutenant colonels 1,280 acres, majors 960 acres, captains 640 acres, and subalterns 480 acres. The measure had strong support but did not pass. In 1817 another effort was made to reward officers but with the bounty scaled down to 1,280 to major generals and to 480 acres for subalterns. Agitation in behalf of the officers continued for many years but not until the new warrant issues of the Acts of 1847–55 were these claims to be successful and then they were limited to 160 acres.

Two bounty land acts of 1814 and 1816 were much more generous than those of 1811 and 1812, though more limited in their scope. The Act of Dec. 10, 1814, offered each noncommissioned officer and soldier who enlisted thereafter and was later honorably discharged a bounty of 320 acres; the last act of March 5, 1816, provided land bounties to American citizens who at the opening of the war had migrated to Canada and then enlisted in the United States Army and were slain, died from wounds, or had been honorably discharged as follows: colonels 960 acres, majors 800 acres, captains 640 acres, subaltern officers 480 acres, and noncommissioned officers and privates 320 acres. 3 Stat. 147, 256.

Number and Acreage of Military Bounties Issued to 1824

Acts	160-acre warrants	320-acre warrants	Acreage	Average Acreage
Dec. 24, 1811				
Jan. 11, 1812				
Feb. 6, 1812	25,476		4,076,160	
Dec. 10, 1814		1,017	325,446	
May 5, 1816			74,032	276

Donaldson, *The Public Domain*, p. 234, shows that a total 29,186 warrants for 4,853,600 acres were finally issued to veterans of the War of 1812. To this total should be added the land bounties that were later given officers of the War of 1812 or their heirs under the legislation of 1850–55.

the Illinois and Mississippi Rivers, and the third in Louisiana Territory, later Arkansas, between the St. Francis and Arkansas Rivers. Six million acres were to be surveyed and opened to entry with the warrants to be issued. Warrant holders could specify the state in which they desired their land to be located but beyond that the location was to be determined by lottery as New York had done. An effort was made to prevent the assignment of the warrants or the establishment of liens on them or on the land on which they were located until the patent had issued.

Edward Tiffin, who was charged with surveying the military tract in Michigan, reported adversely in 1815 on the qualities of the terrain his men had been over: low wet land, many marshes and swamps, scrubby oaks, poor barren soil where not one acre in a hundred was fit for cultivation. So unfavorable was the report that the Michigan tract was abandoned. In its place 500,000 acres in the Territory of Missouri were to be set aside as a military tract and 1,500,000 acres were to be added to the tract between the Illinois and Mississippi Rivers in Illinois. Lewis Cass, for a long generation the leading political figure in Michigan, was greatly incensed at the government's abandoning the Michigan location and at the attention given to the reasons for the change, which had the effect of diverting immigration to other regions. He charged that the two surveyors responsible for the report came to Michigan in the wettest season it had ever known, that they saw but little of the region for they only ran one line and were in the area only a short time and "grossly misrepresented" it. More than a decade passed before their unfavorable report on the economic possibilities of Michigan lost its force.[38]

[38] Lewis Cass, Detroit, May 11, 1816, to Josiah Meigs, "Miscellaneous Letters C," GLO Files, National Archives; *American State Papers, Public Lands*, III, 164–65; George N. Fuller, *Economic and Social Beginnings of Michigan* (Lansing, Mich., 1915), pp. 50 ff.

The reluctance of the Indians to give up their land in Illinois somewhat delayed the opening of the military tract in that state but officials pushed treaty negotiations, surveying, and other preparatory work with sufficient rapidity. By October 6, 1817, men entitled to warrants had selected the state in which they wished to have them located and patents were being delivered to them. This was a great improvement over the country's earlier experience with military bounty tracts.

Illinois, Missouri, and Arkansas Territories were only slightly developed when the tracts were opened and within them there was scarcely a settler, except possibly a few squatters. All were remote from the areas then drawing settlers and had not as yet caught the fancy of western landseekers as had Alabama cotton land or Ohio river bottoms. Part of all these states was, like some of Michigan, poor soil, poorly drained and, furthermore, much less accessible than Michigan. It took courage and something more than physical strength and a land warrant to migrate so far away from Maine, New Jersey, or New York.

Ownership Concentration Continues

Congress could attempt to prevent accumulation of warrants and patents but lawyers could always find ways around such restrictions. By using such devices as a power of attorney signed by the warrantee, agents could get the patents from the General Land Office and then have the titles recorded in their own names. The usual stories were afloat then and later about prices paid for the warrants. Thomas Hart Benton, as well informed on such matters as anyone in Congress, later said that the warrants sold for $10 to $15 (their assignability being illegal, the purchaser might find it best to have them entered in the name of the warrantee) and the patent sold for $25. Examination of 1,500 conveyances of bounty lands in the military tract of Illinois showed an average price paid of $115. It is difficult, however, to recon-

cile this figure with other data. One might venture to say that probably the bulk of the warrants sold for 25 to 70 cents an acre. Agents either bought the warrants or patents outright or agreed to enter the land for a fraction of it, and sometimes ended up with it all.[39] The scale of their operations even exceeded that of the speculators in the Ohio military tracts. For example, in the Illinois tract alone Colonel Joseph Watson acquired 134,240 acres and was the largest holder of land; and Samuel and Richard Berrian of New York together received title to 140,000 acres.[40] Through his Military and General Land & Tax Agency in Washington, Watson advertised that he would secure the bounty warrants for soldiers, would enter them on shares and pay taxes. In addition to other land in Ohio, Indiana, and Virginia, he had for sale 120 quarter-sections in three military tracts and 20 Revolutionary War bounties.[41] John L. Bogardus received patents for 75,840 acres. Twenty-seven men had patents for 573,400 acres. In addition most members of the House and Senate received patents collectively amounting to 621,000 acres. Undoubtedly much of this acreage represents patents for land that members of Congress obtained for their constituents as political favors.[42]

By 1819, the year after Illinois became a state—when it had less than one person for each square mile and only 1,230,000 acres of public land had been sold—3,052,960 acres had passed to private hands in the military tract. The tract was mostly unorganized territory with insufficient population to draw the attention of the census taker in 1820. At that time Daniel P. Cook, a Representative in Congress from Illinois, presented an indictment of the military bounty policy. The remoteness of the tract and the poverty of the veterans had compelled them to sell their land to speculators at low prices, said Cook. Until the speculators could secure all the land they wanted they had disparaged the tract to keep prices down. Though naturally "a delightful body of land," it was a temporary wilderness held by speculators "who have bought it for a mere trifle" and it would be held by them for years, uninhabited, while they waited for the expected rise in price. The bounty to veterans "has thus done but little good to the soldier, and established a nuisance in that flourishing State."

> I have seen the poor soldier who has come from the almost extreme east of our country to Illinois, who has heard a fine and just description of that State . . . . But when he learned that it was so remote from neighbors, and from . . . society . . . he was driven to the shop of the speculator . . . .

Cook urged Congress to allow veterans who had not as yet received their warrants to locate them anywhere on offered lands in-

[39] Stephen B. Munn, one of the large owners of bounty lands in Illinois, on May 8, 1818, bought from George W. Wright his land for $40 or 25 cents an acre; *Cong. Globe*, 33d Cong., 2d sess., Feb. 28, 1855, p. 998. Copy of conveyance in New York Historical Society. Theodore L. Carlson, *The Illinois Military Tract. A Study of Land Occupation, Utilization and Tenure* (Urbana, Ill., 1951), pp. 41, 42n, 58.

[40] Sam G. Berrian wrote on March 26, 1818, of the extreme fertility of Illinois land and the facilities of amassing immense wealth with moderate means. If land values continued to rise as they had been rising he thought he had sufficient to make a "splendid fortune" in a few years. *Journal of the Illinois State Historical Society*, XI (April 1918), 62–63. Richard and Samuel Berrian, James Satterlee, Stephen B. Munn, and Romulus Riggs, all large original buyers of bounty lands, continued to hold them to 1837, Riggs even into the forties. See advertisement of lands to be sold for taxes in *Illinois State Register*, Nov. 3, 1837.

[41] *Arkansas Gazette*, April 30, 1822; letters of Watson of July 14, 1827, April 14, 1828, and Sept. 8, 1830, in "Miscellaneous Letters, W." Treasury Department Files, National Archives. Watson was later employed by the Treasury Department to examine the accounts of several land offices in Ohio and Michigan.

[42] On April 6, 1840, the House of Representatives called for a list of names of soldiers entitled to bounty warrants under the Act of 1812, and which were located in Illinois and the names of the persons to whom the patents were delivered. James Whitcomb, Commissioner of the General Land Office, submitted the data in a massive report of 545 pages in *H. Ex. Doc.*, 26th Cong., 1st sess., Vol. VII, No. 262 (Serial No. 369), July 21, 1840.

stead of confining them to land within the military tracts. Members of Congress had not yet realized all the evils growing out of the use of warrants, nor for that matter had Cook, and they were not ready to free warrants from restrictions on their location.[43]

An early hazard that pioneers in the military tract had to contend with was the high incidence of illness resulting from lack of sanitation facilities, drinking of contaminated water, and mosquitoes that carried the germs of malaria. Major J. D. Wadsworth, who was said to have acquired 48,000 acres in the tract, took out five families of settlers in 1818. He was reported to be selling his lands at $1.50 to $2.00 an acre in 1818, giving settlers the same terms as the government granted. Unfortunately, both he and a number of the people who came west with him became ill and died shortly afterwards.[44]

Tax Muddle

When Illinois was made a state in 1818 it accepted the terms of the Enabling Act, according to which it agreed not to tax public lands after their sale for a period of 5 years (the same provision that had earlier been applied to Ohio and Indiana) and not to tax the military bounty lands for 3 years after they were patented, if they remained for that time in the hands of the patentees. It also agreed not to tax the property of nonresidents higher than that of residents. Unwittingly Congress thus provided for one of the most confused and chaotic title muddles in all American history.

According to the statement of Daniel Cook, the 3-year tax exemption of lands if retained by the patentee did little to discourage speculators from buying the bounty land though it became taxable the very year they purchased it. Since the speculators were mostly nonresidents and they owned at the outset the only taxable property, they constituted practically the only taxpayers in the military tract and, indeed, in the state. Private land claims and donations were ultimately to amount to 185,000 acres but they were mostly unsettled in 1818, not clearly identified and bounded, and not taxable. The table of land sales shows that there were in 1818 no lands taxable that had been sold, as a result of the 5-year exemption. In 1819, 8,836 acres would become taxable and in 1820 an additional 82,740 acres, provided they had not been forfeited and the final payments had been made on them. But on few tracts had final payments been made and the numerous relinquishments and forfeitures kept the taxable lands outside the military tract to a minimum. Settlers coming into the tract had two alternatives: either squatting upon the poor remaining government land or on the better

Land Sales in Illinois, 1814–1834
(Acres)

1814	8,836	1821	50,382	1828	96,093
1815	82,740	1822	27,764	1829	196,246
1816	46,740	1823	60,535	1830	316,246
1817	249,265	1824	43,988	1831	339,411
1818	459,291	1825	45,804	1832	227,376
1819	298,950	1826	81,084	1833	360,241
1820	36,848	1827	58,605	1834	354,013

[43] *Annals of Congress*, 16th Cong., 1st sess., Feb. 25, 1820, II, 1489.

[44] George Churchill, Madison County, Sept. 9, 1818, to Swift Eldred, of Warren, Conn., in *Journal of the Illinois State Historical Society*, XI (April 1918), 63; E. Dana, *A Description of the Bounty Lands in the State of Illinois* (Cincinnati, 1819), p. 47. Churchill provides an optimistic view of the settlement of the tract and the price of lands but conditions turned downward not long afterward.

land of the absentee owners. They saw nothing wrong in both using the land of nonresidents and of drawing benefit from the taxes these nonresidents had to pay. Speculators accustomed to the 5-year exemption on lands they bought from the government may not have been aware of the burden they were assuming in purchasing the military bounty lands.

Governor Thomas C. Ford of Illinois, writing his reminiscences in the 1850's, recalled the "very bad state of feeling [that] existed towards the non-resident land-owners; the timber on their land was considered free plunder, to be cut and swept away by every comer; the owners brought suits for damage, but where the witnesses and jurors were all on one side, justice was forced to go with them. The non-residents at last bethought themselves of employing and sending out ministers of the gospel to preach to the people against the sin of stealing, or *hooking* timber, as it was called. . . . I have never learned that the non-resident land-owners succeeded any better in protecting their property by the gospel, than they did by law." The people reasoned that "every town built, farm made, road opened, bridge or school-house erected by the settlers . . . added to the value" of the speculators' holdings at no expense to them. They "persuaded themselves that in improving their own farms, they were putting money into the pockets of men who did nothing for the country, except to skin it as fast as any hide grew on it." A land tax—at a time when most residents were either squatters or landowners having property not yet taxable—was planned to make the nonresident owner "contribute his share to the improvement of the country, and thus by burdening his land with taxes, render him more willing to sell it."[45]

Absentee owners thought the imposition of the tax rank discrimination as, in view of its incidence, it was. Too commonly they had overextended their resources by buying the soldiers' lands, assuming that they would rise in value and make profitable sales possible at an early date. But such proved not to be the case. What was worse, agents who were glad to aid eastern capitalists in locating or buying land in the West were not as ready to aid them in meeting their taxes and keeping their land off the tax delinquent roll, for the fees were too small to make it worth their while to continue to handle the business. Also, there was the difficulty of getting funds to the West in time to make payments before penalties were imposed and the land became tax delinquent.

By 1823, 1,440,000 acres had become tax delinquent. The list took 36 pages of the *Illinois Intelligencer* in 1826, and comparable space each of the next 6 years, as it contained descriptions of the 6,000 to 9,000 quarter-sections of bounty lands that were tax delinquent and were being offered for sale.[46]

Slow public land sales in Illinois after 1819 and the 5-year exemption of this land from taxes made the bounty lands, which were all taxable after 1822, the principal source of revenue until 1838. Penalties piled up against those absentee owners who doubted the validity of the tax sales and questioned the assessments which, though uniform, were of a necessity very largely levied against nonresidents, for they owned the bulk of taxable land. As late as 1832 the tax receipts from nonresidents constituted 92.9 percent of the

[45] Thomas Ford, *A History of Illinois from its Commencement as a State in 1818 to 1847* (Chicago, 1854), p. 171.

[46] Arthur C. Boggess, *The Settlement of Illinois* (Chicago, 1908), p. 140, and Carlson, *The Illinois Military Tract*, pp. 40 ff. Artemas Matteson of Shaftsbury, Vt., acquired 960 acres of the bounty lands of Illinois in 1819 or 1820, paid $45.39 in taxes over the next 4 years and was told in 1824 that such was the scarcity of money in the West that no lands were selling and he must bide his time if he expected to make anything out of his investment. By 1837 his taxes and fees were up still further but without accompaniment of offers for the land at respectable prices. Correspondence of Artemas Matteson and Thomas J. Owen, 1819–37, in the New York Historical Society.

total receipts of Illinois. A tax title had at least a nuisance value, being a lien on the land. A decision of the state supreme court brought little comfort to buyers of the tax titles who then went to Chancellor James Kent—the great constitutional authority—and secured from him a statement that they were regular and in conformity with the statutes and were valid.[47]

Heavy penalties were assessed against delinquent taxpayers, amounting to between 50 and 100 percent of the taxes due. Once a tax title had been issued, the owner of the patent title had to pay a comparable penalty to remove the lien on his property. This handsome profit induced land agents and some holders of bounty lands, who saw little opportunity to sell their land for some time, to buy such tax titles at the annual sales in the hope of evening up on their investments.[48]

Squatters and Disillusioned Speculators

Meantime, the military tract, despite its unfortunate reputation for absentee ownership and title difficulties, was receiving growing numbers of immigrants who found unimproved land, squatted upon it and began farm making. They hoped to gain a preemption right if the land proved to be public or, if it were owned by an absentee owner, that the patent owner might come to terms when he realized the obligations that were accumulating against his property. If ejectment action was brought by the patent title owner against a squatter who had unknowingly settled upon, begun improving, and acquired a color of title (such as a tax title) to an unoccupied tract, the squatter had two alternatives under the Occupancy Law of 1819. He could either demand that he be paid for all the improvements he had put on the land, minus such damage as he may have committed, or he could offer to pay the owner the appraised value of the land without the improvements. Either the value of the improvements or the value of the land without them was to be determined by a local jury which could ordinarily be expected to render a decision favorable to the occupant and against the absentee owner. The very abundance of tax titles and the ease and cheapness with which they could be acquired constituted a real danger to the patent owner, for they provided the squatter with a color of title he otherwise lacked.

By 1830, most of the original holders of bounty lands had long since conveyed their titles to others. Stephen B. Munn, for example, had added tax titles to 38,000 acres to his thousands of acres of patent titles. Romulus Riggs, member of the famous banking family of New York, Philadelphia, and Washington, had accumulated 40,000 acres, partly by direct purchase from ex-soldiers. He tried to arrange with squatters on his tracts to pay the taxes as rent and at the same time to accept a lease acknowledging Riggs' ownership. Largest of the holdings was that of the New York & Boston Illinois Land Company which had titles of one sort or another to more than 900,000 acres. Many disillusioned speculators placed their lands under the management of this company. These holdings, together with large purchases of tax titles, made the company the largest holder of real estate in Illinois, though the value of the tax titles was still in question. Had the boom of the thirties continued, the company might have been able to dispose of sufficient property to make a success; but the crash of 1837 brought it down as it did so many other speculative enterprises.[49]

Bankruptcy made the title situation in the military tract worse, as did the adoption in 1839 of a 7-year adverse possession law and court decisions under it. This measure provided that 7 years of unchallenged occupation of a property, the payment of all taxes assessed on it, and a color of title, entitled the

[47] *Iowa Territorial Gazette and Burlington Advertiser*, March 2, 1839.

[48] Carlson, *The Illinois Military Tract*, p. 47.

[49] Paul W. Gates, *The Illinois Central Railroad and its Colonization Work* (Cambridge, Mass., 1934), pp. 38 ff.

occupant to legal ownership. Thus, in addition to patent titles, tax titles, judgment titles, squatters claims combined with tax titles, and liens of various sorts, titles under the "Quieting Title Act" created more legal questions that took years to thrash out. As a result, clear, uncontested ownership in the tract was unusual.[50]

Patent owners were indeed so hard pressed that a group met in Macomb, Illinois, on September 23, 1842, "to form strength by uniting our interests and see that each and every patent title suit is properly and effectively prosecuted. This being done the patent title holder must & will hold the land," said a notice for the meeting in the *Peoria Register and North-Western Gazetteer*. The *Register*, commenting on the purpose of the meeting, said that there were about 17,500 quarter-sections of land in the military tract which were then in controversy between patent- and tax-title holders.[51] Some of the lands were highly improved and included some of the best farms in the state. It was proposed to organize "a vigilance committee"—an ominous title in frontier Illinois—for each county, to enroll patent title holders and to take measures for their defense. At the meeting, officers were elected, dues of $5 were established, and the "Patent Title Association" was created "to make all necessary arrangements for the prosecution and defence of all suits brought by or commenced against any" member.[52] Promptly, the objectives of the organization were attacked by one writing under the caption "No Combination." He condemned all such efforts to nullify the law providing for sales of tax delinquent land, observed that without the power to coerce by selling delinquent land, government would be at a standstill, and declared that those opposing the sales and the new titles were not carrying their share of government costs and that their success would be a powerful blow at the credit of the state. Tax titles were valid, the writer maintained.[53]

Eastern capitalists were troubled by the growing burden and difficulty of paying taxes on their lands, of keeping the titles clear or redeeming their lands if tax titles had issued, and by the numerous conflicts with squatters. They became convinced that western people were a rapacious gang of rascals prepared to take advantage of absentee owners on every occasion. Such allegations were repeated over and over and reproduced in travel accounts. Inhabitants of the western states were portrayed as having no respect for private property and as being ever ready to strain and distort the law to strike at nonresidents. This stereotype was to make it difficult for western states to raise capital when they sought later to borrow for railroad and canal construction.[54]

The Tract in Arkansas

The Military Tract of Illinois in its formative period attracted much more public attention than the tracts in Missouri and Arkansas. Neither of them compared with it in quality and general attractiveness, neither drew early immigrants in such large numbers, and neither has published its records.

The 2 million-acre Arkansas Military Tract, situated between the St. Francis and Arkansas Rivers, was found to contain much inferior

[50] Attorneys in Cincinnati advertised that they would represent patent-title owners in litigation to recover possession of property lost to tax-title holders in Illinois, *Cincinnati Daily Gazette*, March 3, 1836.

[51] Aug. 26, 1842.

[52] *Peoria Register and North-Western Gazetteer*, Sept. 30, 1842.

[53] *Ibid.*, Oct. 7, 1842.

[54] Charles Dickens had invested in the Cairo City and Canal Company which was promoting the city of Cairo at the junction of the Ohio and Mississippi Rivers, and had lost heavily when it failed. In repayment, some have thought, he vented his feelings against Cairo and western folk, though actually a Philadelphia group was responsible. J. F. Snyder, "Charles Dickens in Illinois," *Journal of the Illinois State Historical Society*, III (October 1910), 9 ff.; John M. Lansden, *History of the City of Cairo, Illinois* (Chicago, 1910), pp. 170 ff.

land, making it impossible to provide nearly as much land for veterans as had been hoped. Delays in surveying and finding an adequate supply of good land prevented holding the lottery for selections until 1820. After selections were made and patents issued it appeared that some tracts had already been entered as preemptions while others had been confirmed as private land claims. Furthermore, the provision of the legislation assuring the soldiers good or fit land, was not satisfactorily carried out until Congress, on May 22, 1826, authorized the exchange of land "unfit for cultivation" for any good land between the St. Francis and Arkansas Rivers, provided that the warrantee had not been divested of his title by any conveyance or other encumbrance.[55]

Few soldiers who opted to have their warrants located in Arkansas settled there. The *Arkansas Gazette* of November 22, 1826, reported that more than 95 percent of the tract fell at the outset to speculators. Among them was Colonel Joseph Watson, the largest single owner of bounty land in Illinois. It is not clear how extensive his holdings in Arkansas were, but he advertised in the *National Intelligencer* of May 1, 1824, offering to buy 600 quarter-sections of bounty lands in that state. For 100 additional quarter-sections he was prepared to exchange lands in Ohio, Missouri, or Illinois. In 1828 Watson had 8,930 acres in Arkansas advertised for tax delinquency. At that time he was spoken of as the mayor of Philadelphia.[56]

There were practically no lands in Arkansas taxable when the bounty lands became subject to taxes in 1823. Consequently the territory had to rely heavily upon them for its support. It levied a tax of $2.40 on each quarter, whether improved or not. This may have seemed unfair to absentee owners whose land was just as nature had made it, while the few settlers who had made improvements of considerable value enjoyed 5 years of tax exemption if they had bought land from the government. Some lands also were assessed an 80-cent county tax. The territorial legislature, after levying its tax, permitted too short a period for payment, as the *National Intelligencer* of November 22, 1825, pointed out; it took 37 days for news of the taxes to reach Washington and by that time it was too late to transmit funds for payment. Absentee-owned lands then became delinquent, tax titles were promptly issued against them, penalties and interest charges piled up rapidly.[57]

Many complaints of the Arkansas tax policy reached Congress and induced a House committee to look into it. Without imputing bad faith to the territorial legislature, the committee reported that the course of the territory on taxes was "characterised by a looseness altogether unusual." Redeeming the lands was almost impossible because no officers were appointed to accept redemption money. Furthermore, the tax title holder, having obtained possession, insisted on payment for his improvements if the lands were redeemed. The committee recommended congressional action to extend the period for paying taxes without penalty to a full year, to allow a redemption period of 2 years, and to station a territorial officer in Washington to receive taxes and other payments. The House passed a measure to ease the problems of the absentee owner but the Senate failed to act on it.[58]

In the absence of Federal legislation, taxes and titles fell into ever deeper disarray in Arkansas. In 1827 the bounty lands still constituted the only important source of revenue. They were annually taxed; the taxes were not paid in time and went into default, and the lands were sold for taxes. As late as 1829 the *National Intelligencer*, which was read by many holders of the bounty lands, pointed out that it would be necessary for owners to set out for Arkansas as soon as news of the tax levy arrived and to travel faster than the

[55] Act of May 22, 1826, 4 Stat. 121.
[56] *Arkansas Gazette*, Sept. 2, 1828.
[57] *Arkansas Gazette*, Aug. 3, 1824.
[58] Carter (ed.), *Territorial Papers*, XX, 212–16.

mails in order to pay the taxes before a penalty could be added.[59]

In addition to tax problems, the owners of bounty lands in Arkansas were troubled by the poverty of the land allotted to them—its general infertility and lack of fair drainage. All of these things contributed to the unfavorable reputation Arkansas lands and people early acquired, and to the slow growth of the territory.[60]

The Tract in Missouri

A third military tract was established in 24 townships north of the Missouri River in Randolph, Macon, Chariton, and Carroll Counties, Missouri. As warrant holders were privileged to select the territory or state in which they wished to have their land located, much the larger number chose Illinois first and Arkansas next. The Missouri tract being 96 miles west of the Missouri River and 174 miles from St. Louis offered the least inducement for selection, so far as location was concerned. There seems to be a conspiracy of silence concerning the experience of settlers and warrant holders in the Missouri tract for the usual indexes of state histories and state historical societies offer no information that would throw light on the question. It is instructive, however, that both Thomas Hart Benton and Ambrose H. Sevier, Senators from Missouri and Arkansas, respectively, out of their experience with military bounty land districts in their states, urged in 1847, when another and even more generous distribution of land bounties to veterans of earlier wars was being considered, that the utmost care be taken in framing the measure. They were particularly concerned that military bounties should provide substantial benefits to the warrantees, not to speculators, and that the location of the warrants should not be confined to specially selected tracts.[61]

Once a right in land was created or conceded by the United States—even though there was a terminal point beyond which the right lapsed if requirements were not met—Congress found it impossible to avoid granting extension after extension. We have seen this with respect to the Virginia land warrants and it was true of the War of 1812 bounty warrants. The right to apply for warrants not previously obtained was extended in 1835, 1842, and 1854 and the right to locate them on any public lands open to entry was extended in 1842 and 1854. Finally, in 1858 the issue of warrants ceased and the right to locate them expired in 1863.[62]

Mexican War Bounties

President James K. Polk's request to Congress for a Declaration of War against Mexico in 1846 revived the question of land bounties as a means of inducing enlistment and rewarding soldiers who served for the duration of the war. Circumstances were different in 1847, however, than in 1811 and 1812 when the previous issues of bounty warrants had been made. Land prices had since been reduced by 37½ percent, the smallest tract one could purchase had been lowered from 160 to 40 acres, and, though credit had been abolished, it must have seemed easier to most settlers to buy government land in 1847 than it had been in 1812. Yet it was the view of members of Congress from both western and

[59] *Arkansas Gazette*, May 15, 1827; *National Intelligencer*, Oct. 3, 1829.

[60] Carter (ed.), *Territorial Papers*, XV, 329.

[61] *Cong. Globe*, 29th Cong., 2d sess., Jan. 14, 15, 16, 1847, pp. 173, 184, 206. In Chariton County, Mo., most of which was bounty lands, *An Illustrated Historical Atlas of Chariton County, Mo.* (Philadelphia, 1876), shows W. G. Webb owning 7,270 acres, Thomas Ferguson 2,080 acres, and J. P. Williams 3,710 acres. Though one of 115 counties, Chariton had 13 of the 685 farms over 1,000 acres and 31 percent of its farms tenant operated in 1880 as compared with 27 percent for the state.

[62] Between Feb. 11, 1800, and Feb. 8, 1854, Congress adopted 23 measures extending the time in which veterans of the Revolution and the War of 1812 could apply for and enter their military bounty land warrants.

eastern states that the offer of a land bounty was still sufficient, without other compensation than the usual small pay allowed soldiers, to attract enlistments. May we not conclude then that land ownership was still not altogether easy to attain?

In considering new bounty land legislation, Congress gave little thought to the effect this would have upon land policies then in operation, except that such a step would reduce revenue from the lands. No proposal was made to confine warrant entries to particular tracts. Aware of the boost to speculation that an issue of bounty warrants would cause unless steps were taken to protect the rights of the warrantee, much attention was given to the best way to prevent assignment of warrants. Benton and other members of the Senate Committee on Military Affairs seemed anxious to provide such protection. It had not been effectively provided by the Acts of 1811 and 1812. The committee's proposal was to make all sales, liens or transfers of the right of bounty null and void before the issue of the warrants and to have the lands inalienable for 5 or 7 years after patent had issued. The latter proposal was too drastic for the Senate and it was dropped, but the effort to prevent alienation of the bounty right before the warrant issued was retained. It seemed necessary for Congress to make a public profession that it was trying to protect soldiers, though it was understood by anyone experienced in the history of the earlier bounty land business that such restrictions were easily evaded.[63]

Without much serious consideration of the bounty land proposal in either the Senate or the House, Congress provided that noncommissioned officers, musicians, and privates who served in the newly authorized voluntary companies for a year or more and who had "marched to the seate of war" should receive a 160-acre land warrant usable only on land open to private entry. Those serving for less than a year were to receive a 40-acre warrant. To prevent conflict with preemption claimants, it was provided that warrants should not be laid upon any lands "to which there shall be preemption right, or upon which there shall be an actual settlement and cultivation." This would prevent a settler from employing a warrant in place of cash in preempting his claim and, like the restriction that warrants could only be used for land subject to private entry, would somewhat limit the demand for them and the price they would bring in the market.[64] Persons entitled to receive 160- or 40-acre bounty warrants were offered the opportunity of taking in their place either $100 or $25 in scrip bearing 6 percent interest. This scrip differed from that exchanged for Virginia land warrants under the Acts of May 30, 1830; July 13, 1832; March 2, 1833; and March 3, 1855, in that it was in dollars, not acres, and was acceptable for any payment due the government. That $100 in scrip was offered in place of 160 acres may be taken as indicating the warrants were appraised at 62½ cents an acre.[65]

Under the Act of 1847, 80,666 warrants for 160 acres and 7,583 warrants for 40 acres were issued, amounting to 13,209,880 acres. The efforts to make them unassignable proved ineffective, as realists had anticipated, and the warrants were dumped on the market where they were quoted at the outset at 65 to 78 cents an acre.[66] Before more than a

[63] *Cong. Globe*, 29th Cong., 2d sess., Jan. 16, 19, 1847, pp. 192, 205.

[64] Richard M. Young, Commissioner of the General Land Office, held in his annual report for 1847 that soldiers preempting in their own right could use their warrants instead of cash. *S. Ex. Doc.*, 30th Cong., 1st sess., 1847–48, Vol. II, No. 2 (Serial No. 504), p. 13.

[65] Act of Feb. 11, 1847, 9 Stat. 125.

[66] Richard M. Young, Commissioner of the General Land Office, in *New York Tribune*, Oct. 14, 1848. Because the much larger issue of bounty warrants under the Act of 1850 were for the time almost unassignable and their market value was much lower as a result, most writers on public land policies have held that all bounty warrants, including those of 1847 were unassignable. Examination of the warrant entry volumes of the different land offices shows that almost from the first the 1847 warrants were assignable.

seventh of the warrants had been issued, Richard M. Young, Commissioner of the General Land Office, in his annual report for 1847, rightly predicted that they would fall into the hands of speculators who would act as intermediaries between the settler and the government, entering the land with the depreciated warrants and reselling the land at near the government price.[67] Three years later, Young's Whig successor, Justin Butterfield, reported to the President that the assignability of the warrants of 1847 had opened the door "for the commission of extensive frauds, as well upon the soldier and his heirs as the government."

> Numerous discharges have been forged, and warrants obtained thereon, and assigned and passed into the hands of *bona fide* purchasers, by individuals personating the soldier. Persons assuming to act as agents in procuring bounty lands have, in many cases, imposed upon the soldiers by obtaining assignments of their warrants, duly acknowledged before a magistrate or notary, leaving blanks for the number, date of warrant, and date of assignment and acknowledgment. These blanks were filled up after the issue of the warrants, so that the assignments appear on their face to be fair and regular, and executed after such issue. Warrants thus assigned are passed into the hands of innocent purchasers; and in such cases the soldier is generally defrauded of his land, as it is difficult, if not impossible, for him to explain or controvert the assignment.

Butterfield added that transfers were frequently effected by blank powers of attorney, "surreptitiously obtained from the soldier before the adjudication of his claim, and filled up afterwards." He stated that it would have been far better if the warrants had not been assignable and if the patent had issued in all cases to the soldier. This, however, had been done with the warrants of 1811 and 1812 and with no better success in protecting the soldier. Of the 52,269 warrants located to November 30, 1850, 300 had been cancelled because they had been obtained on false or forged papers, 275 had been suspended because of irregularity or fraud, and 1,400 caveats contesting the issue of patents had been filed.[68]

Experience had shown that few soldiers would be able to go west to secure lands with their warrants. Some would even have to sell them to finance the trip west, hoping on arrival either to work until they could raise the money to purchase a quarter-section or to squat upon public land and make enough to preempt a quarter-section when the land was put up for sale. Most of the warrants therefore passed to brokers who bought and sold them and perhaps used some to take a flyer in land themselves. From 1841 to 1846 land sales had averaged 1,626,000 acres; in 1847 they reached 2,521,306 acres and were not to be as large again until the adoption of the Graduation Act in 1854. With over 13 million acres in warrants dumped on the market, their price plummeted to near the $100-equivalent offered soldiers in place of them. The drop in price brought no benefit to settlers on unoffered lands who could only preempt their land with cash, but it was a great boon to speculators and money brokers seeking lands cheaply or lending funds to settlers on offered lands at "frontier" interest rates.[69] An examination of the first 300 warrants located on land in the Chicago district of Illinois shows that less than a dozen were located by the warrantee. Most of them were used by speculators, or were used to enter lands for settlers. Payments ranged from $220 to $300 in extreme cases for the entries brokers and loan sharks made for settlers and carried for a year.[70] Land warrants were thus a great boon to the speculator and the moneylender for they enabled the former to purchase about

[67] *S. Ex. Doc.*, 30th Cong., 1st sess., 1847–48, Vol. II, No. 2 (Serial No. 504), pp. 12–13.

[68] *S. Ex. Doc.*, 31st Cong., 2d sess., Vol. II, No. 2 (Serial No. 588), pp. 6–7.

[69] R. W. Latham & Co., Bankers, Washington, D.C., were advertising on July 1 in the *National Intelligencer* they would pay the very highest price for soldiers' land warrants. By September 1847, the warrants were available in the land office town of Iowa City. *Iowa Capital Reporter*, Sept. 29, 1847.

[70] *Kansas News* (Emporia), April 17, 1858.

twice as much acreage as he could have for cash and enabled the latter to hide his usury, though most people knew how the business operated.

Once speculators, brokers, and moneylenders had discovered how profitable it was to use warrants in the conduct of their operations in the West, the market value of the warrants rose rapidly, approaching $1.20 in 1854, and Congress was urged to issue them more liberally. Other groups were also interested in adding to the number of warrants in circulation, among them military officers of the Mexican War, soldiers of the Regular Army, those who had been called up or enlisted only to be discharged before the minimum of 12 days had elapsed, and a variety of other persons who had served with the armed forces in one way or another, both in the Mexican War or in previous Indian engagements. This combination was to prove unbeatable. During the next 5 years three significant and generous measures providing for the issuance of a far greater number of warrants were passed.

Bounty Land Act of 1850

The Bounty Land Act of 1850 was broader than that of 1847, extending benefits to a much larger number of men but giving them no more acreage. Bounty lands were to be given to officers and soldiers who had not previously received land and who had served in any of the wars since 1790, including those with the Indians. Those who had served 9 months were to have 160 acres, those with 4 months' service were to have 80 acres, and those who had served a month were to have 40 acres. The ban against using the warrants on preemption claims was relaxed by permitting their use with the consent of the settlers whose lands were to be entered.[71]

Congress tried again in 1850 to make warrants inalienable and came close to success. Westerners only had to look around to see almost everywhere in the public domain how extensively speculators and land and money brokers had used the warrants of 1847 to accumulate large holdings, held for the most part by nonresidents. They wished, as Benton had in 1847, to prevent the new issue of warrants from being made useful to such groups. Robert C. Schenck of Ohio told in Congress of two former members of the House who had aided in passing the Act of 1847 and then, through "jackall agents" at New Orleans and elsewhere had bought up soldiers' claims for $10, $20, and $30 each. One of these men had profited to the tune of $100,000.[72] Senator James Shields of Illinois, who was in charge of the new bounty measure, said that it made warrants unassignable by declaring no conveyance, in relation to the warrant, good in law. Only after the land became the absolute property of the soldier was it possible for another to acquire it. Other Senators were not entirely convinced. Andrew P. Butler of South Carolina held that warrantees could still give a power of attorney to locate the land and at the same time convey all the soldiers' rights to such land. Benton, in his concern for soldiers against speculators tried again, as in 1847, to make both warrants and land inalienable, but Congress was not prepared to go that far.[73]

Altogether, 189,121 warrants, mostly for 40 and 80 acres, were issued under the Act of 1850. They required 13,165,880 acres for their satisfaction. The warrants were declared unassignable by the Commissioner of the General Land Office, which had the effect

[71] Act of Sept. 28, 1850, 9 Stat. 521.

[72] *Cong. Globe*, 31st Cong., 1st sess., June 24, 1850, p. 1287.

[73] *App., Cong. Globe*, 31st Cong., 1st sess., Sept. 6, 1850, pp. 1786, 1689, 1691 ff. Butler favored making the warrants assignable and had some support from other Senators from the East who were aware that most warrantees would sell their rights and wished to make the transfer as easy and as profitable as possible. Another proposal, made by Mason of Virginia, would have instructed the Secretary of the Interior to provide the means to enter land in the West for the warrantee.

of sharply cutting their market value and greatly reducing the benefits they brought to the thousands of old soldiers who could not go out to Illinois, Wisconsin, or Iowa to locate them. An influential firm of land agents of Mineral Point, Wisconsin, representing many eastern capitalists, reported that they were buying 1850 warrants in New York as follows: $20 for 40-acre warrants, $35 for 80-acre warrants, and $60 for 160-acre warrants. The firm insisted that the sale of a warrant before the patent was issued was valid, arguing that soldiers could make a valid title to land when entered and could make a valid agreement to sell as soon as the warrant was issued and in effect maintaining that the restriction on alienation was meaningless. A year later the *New York Tribune* reported that the warrants of 1850 were "unsaleable" but it added that an occasional sale was made for $80, or 50 cents an acre. Mexican warrants sold for 68 to 81 cents an acre. To assure ready sale and a fair return to holders of the 1850 warrants it was important to have them made assignable.[74]

Warrant Assignability

Even before its adoption, the Bounty Land Act of 1850 became the object of varying interpretations; there was much uncertainty as to its meaning. Members of the House had been deeply influenced by the plea that most of the persons to receive the bounty were in the older states, that many were old men too far along to move west to enter their land and would perforce have to sell their right. They had wanted to make the new warrants assignable and thought the measure as finally approved did make them assignable. Anti-speculator sentiment was much stronger in the Senate where there was concern for making the warrants unassignable. Whether, as was claimed, a section of the act was dropped, inadvertently or otherwise, in the final rush for the adoption of the measure, the *Journals* of the two Houses and the *Congressional Globe* do not make clear. Few members of Congress were satisfied with the act. During the last frantic days of the session the Senate passed a measure to amend the act specifically to prohibit the sale or transfer of the warrants, but it failed in the House.[75]

In the second session of the 31st Congress, supporters of assignability introduced into the House a joint resolution declaring that nothing in the Bounty Act of 1850 "shall be so construed as to prevent the sale and transfer of any certificate or warrants issued by virtue of said act, prior to the issue of the patent thereon." It passed both Houses by an overwhelming vote after a deluge of petitions in its behalf, mostly from Pennsylvania and Virginia. However, the Senate added amendments, introduced in part by westerners who were not favorable to assignability, and the delay in the Senate made it impossible to send the resolution back to the House for consideration before adjournment. Yet the strongly favorable vote in both Houses for the explanatory feature of the resolution might have justified the Secretary of the Interior and the Commissioner of the General Land Office in instructing the registers and receivers to accept assigned warrants.[76]

Disregarding the fact that large majorities had voted to make the warrants of 1850 assignable, Justin Butterfield, Commissioner of the General Land Office, interpreted the Act of 1850 as meaning that no transfers of

[74] Washburn & Woodman, Mineral Point, Wis., April 7, 1851, to Geo. W. Paine, and to Ephraim Flint, April 15, 1851, Washburn & Woodman Letter Book, 1851, Wisconsin State Historical Society; *New York Tribune*, March 11, 1852. By March 29, 1852, the 1850 warrants were quoted at 62 cents an acre. *New York Tribune*, Feb. 5, March 29, 1852.

[75] *Senate Journal*, 31st Cong., 1st sess. (Serial No. 548), Sept. 30, 1850, pp. 707, 708; *House Journal*, 31st Cong., 1st sess. (Serial No. 566), Sept. 30, 1850, p. 1602; *Cong. Globe*, 31st Cong., 1st sess., Sept. 30, 1850, pp. 2072, 2074.

[76] *House Journal*, 31st Cong., 2d sess. (Serial No. 594), Dec. 30, 1850, p. 91; *Senate Journal*, 31st Cong., 2d sess. (Serial No. 586), Feb. 28, March 3, 1851, pp. 230, 277; *Cong. Globe*, 31st Cong., 2d sess., p. 126.

the warrants were permissible and only when the patent had issued could the land be conveyed by the veterans. His ruling immediately produced a storm of criticism and led Congress to take up the issue of assignability and to settle it at the next session.[77]

Western spokesmen like Isaac P. Walker of Wisconsin, ably supported by Amos Tuck of New Hampshire, continued to oppose assignability. They drew attention to the large amount of land being entered in the West by speculators, expressed the fear that the holdings of nonresidents who had no intention of developing their land would seriously retard the development of that area, declared that an additional issue of warrants would enable speculators to anticipate land grant railroads and so engross the lands as to make construction impossible. Opponents were in a minority, however, for the advocates of assignability had worn down even many westerners through interminable discussions of the measure, and the pressure from the old states was irresistible.[78] The resulting Act of March 19, 1852, made all warrants issued, or to be issued, assignable; it permitted the use of the warrants on land held for higher than the minimum price of $1.25 an acre with the requirement that the difference between the $1.25 and the $2.00 or $2.50 should be paid in cash by the entryman, and authorized any person entitled to a preemption right to use a land warrant in lieu of cash. It also extended the military bounty privilege to militiamen who were called into service after 1812.[79] Under this act some 11,986 warrants were issued, calling for 694,120 acres.

The last major bounty act was that of March 3, 1855. It let down almost all barriers in the distribution of bounty warrants. Instead of the previous 30 days of service only 14 were now required, persons who had marched or traveled 1,200 miles but who might not have served 14 days were to have warrants, as were Indians who had been in the service, chaplains, and groups who had served for a very short time but were in specifically mentioned battles. All who had previously received warrants and all those now entitled for the first time to receive them were to have a full quarter-section; if earlier they had been given a 40- or an 80-acre warrant they could now draw a second warrant to cover the difference.

LEADING STATES IN MILITARY BOUNTY LAND ENTRIES TO 1871[a]

Iowa	14,096,905
Illinois	6,000,000[b]
Wisconsin	6,342,702
Minnesota	6,959,379
Missouri	6,312,402[b]
Kansas	4,226,545
Michigan	3,932,946
Nebraska	1,785,948

[a] *GLO Report, 1871*, p. 340, lists the total acreages under the rubric "granted for military services."

[b] I have deducted for Illinois and Missouri an estimated amount of entries for the War of 1812 warrants.

This new act provided for a greater quantity of military bounty land warrants than any previous act, ultimately amounting to an issue of 263,083 warrants for 34,148,910 acres. Altogether in the four acts of 1847 to 1855 authorization was provided for the issuance of 552,494 warrants totaling 61,225,430 acres. At the rate of entry of public lands from 1840 to 1847 these 61,225,430 acres might have met the needs of the country for land for 30 years, but conditions were changing rapidly, and the distribution of these warrants played their part in the change.

With such a large amount of paper in circulation, the warrants became not only the principal medium for the purchase of land, but also for other types of business

[77] George B. Sargent, a partner of the powerful Cook, Sargent and Downey land firm of Iowa was in Washington, on March 5, 1851, protesting Butterfield's interpretation. His letter of that date to A. H. H. Stuart, Secretary of the Interior, is in the Secretary's Files, National Archives.

[78] The debates may be followed in the *Cong. Globe*, 32d Cong., 1st sess., pp. 298 ff., 666 ff.

[79] 10 Stat. 3.

NUMBER AND ACREAGE OF BOUNTY LAND WARRANTS ISSUED UNDER ACTS OF 1847, 1850, 1852, 1855, TO JULY 1, 1906[a]

Acts of	160 acres		120 acres		80 acres		40 acres	
	Number	Acres	Number	Acres	Number	Acres	Number	Acres
1847	80,689	12,910,240					7,585	303,400
1850	27,450	4,392,000			57,717	4,617,360	103,978	4,159,120
1852	1,223	195,680			1,699	135,920	9,070	362,800
1855	115,599	18,495,840	97,086	11,650,320	49,486	3,958,880	542	21,680
Totals	224,961	35,993,760	97,086	11,650,320	108,902	8,712,160	121,175	4,847,000

	Totals of warrants and acres		Totals of warrants and acres by acts		
160 acre warrants	224,961	35,973,760	1847	88,274	13,213,640
120 acre warrants	97,086	11,650,320	1850	189,145	13,168,480
80 acre warrants	108,902	8,712,160	1852	11,992	694,400
40 acre warrants	121,175	4,847,060	1855	263,083	34,148,910
Miscellaneous (10, 60, 100 acre warrants)	370	22,190			
Totals	552,494	61,205,490		552,494	61,225,430

[a] Secretary of the Interior, *Annual Report*, 1906, p. 548. To these totals should be added the 2,666,080 acres given 16,663 veterans of the Revolutionary War in the U.S. Military Tract in Ohio, 4,891,520 acres given 29,471 soldiers of the War of 1812 in the three United States military tracts.

A total of 3,186 soldiers elected to take the $10 and $25 Treasury certificates in place of 454,560 acres under the Act of 1847. Not included in this table is the Revolutionary War Scrip given veterans unable to locate their rights in the Virginia Military Tract.

exchanges. For example, Jason Easton, one of the most extensive moneylenders and dealers in land warrants in Minnesota, who accumulated a fortune in lending at rates up to 60 percent interest to desperate squatters, on occasion had more warrants than he could lend at his high interest charge and used them to buy cattle or for other commercial purposes.[80]

Years of Economic Expansion, 1848–57

Emigration to the newly developing western communities was given a major impetus by the discovery of gold in California, the demand for American wheat abroad during the Crimean War, and the flow of European capital into American enterprises, especially into western railroads. The surge of population flowing westward from the older states and from northern Europe reached new, successive highs. We cannot quantify the westward movement of population except by comparing the population of the states as given in the Census of 1850 with that of 1860, but those figures are revealing. The population of Illinois and Wisconsin more than doubled during the decade and that of Iowa more than tripled.[81]

[80] Robert R. Jost, "An Entrepreneurial Study of a Frontier Financier, 1856–1863" (Ph.D. dissertation, University of Minnesota, 1957), p. 14.

[81] The statistics of immigration are from *Historical Statistics*, p. 57; the population data is from the Censuses of 1850 and 1860; the mileage of railroads is from Henry V. Poor, *Manual of the Railroads of the United States for 1870–71* (New York, 1870), p. xliv.

Population

	1850	*1860*
Illinois	851,470	1,711,951
Wisconsin	305,391	775,881
Iowa	192,214	674,913
Minnesota	6,077	172,023
Missouri	682,044	1,182,012
California	92,597	379,994
Arkansas	209,897	435,450
Texas	212,592	604,215

U.S. Immigration

1840	84,066	1855	200,877
1845	114,371	1856	200,436
1850	369,980	1857	251,306
1851	379,466	1858	123,126
1852	371,603	1859	121,282
1853	368,645	1860	153,640
1854	427,833		

When the first of the bounty acts was passed in 1847 there were only 792 miles of railroad in all the public land states. This mileage grew to 5,403 by 1855 and to 13,467 by 1860.

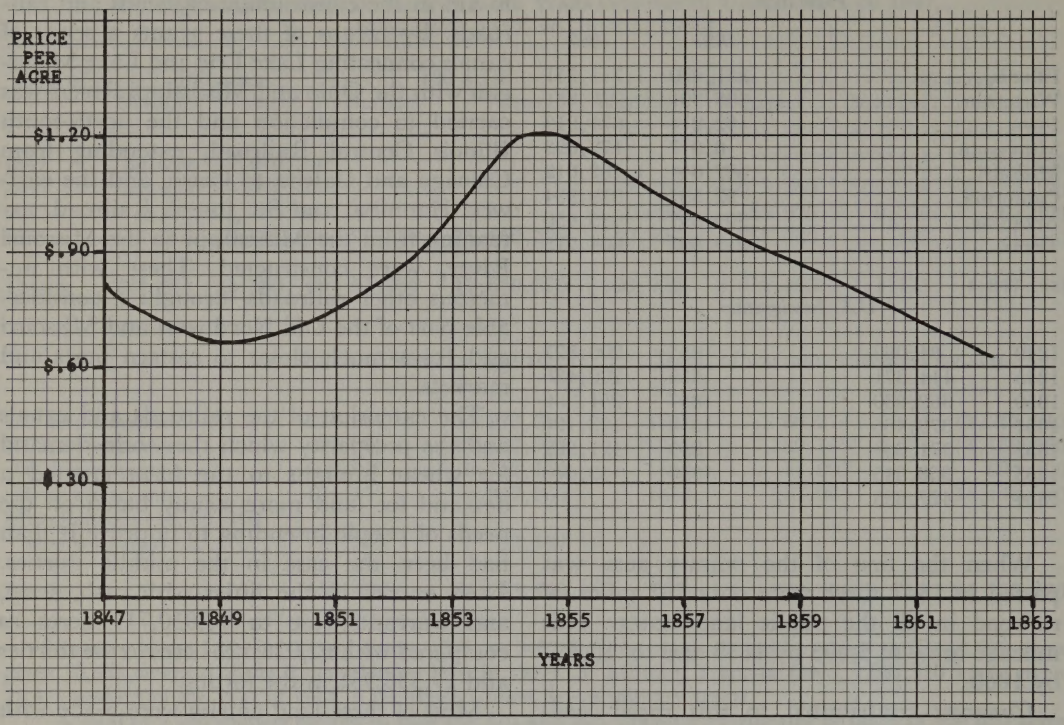
Congress contributed to this rapid economic growth by making liberal land grants to aid in the construction of canals and railroads. By means of these grants a series of canals connecting Lake Erie and Lake Michigan with the Ohio and Mississippi Rivers was carried to completion and the north-south Illinois Central Railroad, extending from Chicago and Galena to Cairo, and the east-west Hannibal and St. Joseph Railroad, extending from the Mississippi to the Missouri River, were constructed. These with numerous other railroads, brought a considerable part of the Old Northwest and Missouri and Iowa much closer to eastern ports and markets.

The extension of the railroads and canals and the prosperity which the world demand for wheat brought to the farm created a demand for land more solidly based on the needs of people intending to improve it than had been the case in the middle thirties. Land entries in the fifties with cash, scrip, and warrants rose to 92,030,719 acres as compared with 62,026,123 acres in the thirties and 17,536,951 in the forties.

Most of these land entries were made with military bounty warrants or were for gradu

Public Land Sales and Military Warrant Entries in Acres

Year	Sales at $1.25	Graduation Sales	Military Warrant Entries
1847	2,521,306	----------	239,880
1848	1,887,553	----------	2,288,960
1849	1,329,903	----------	3,405,520
1850	1,405,839	----------	2,167,680
1851	1,846,847	----------	2,454,000
1852	1,553,071	----------	3,201,314
1853	1,083,495	----------	6,142,360
1854	7,035,735	----------	3,402,620
1855	7,011,049	8,720,373	1,395,580
1856	5,231,084	3,997,293	8,382,480
1857	1,622,729	2,530,014	6,283,920
1858	817,528	5,802,150	2,987,378
1859	511,476	3,450,103	2,914,700
1860	601,158	2,860,044	2,782,780
1861	380,526	1,085,372	2,017,440
1862	68,816	76,032	611,827
Totals 1855–62	16,274,366	25,706,609	30,140,877



Price Per Acre of 160-Acre Land Warrants, 1847–1862

ation lands bought at prices of 12½ cents to $1 an acre, depending on the time the land had been on the market. Warrants of 1855, which were acceptable for preemption, were almost as good as land office money, except that where a quarter-section contained less than 160 acres a full warrant had to be used. Lowest quotations always applied to the 120-acre warrants and highest to the 40- and 160-acre warrants.

In seven of the years between 1848 and 1860 lands entered with warrants exceeded those entered with cash, and in three of the years in which cash sales were larger, the sales of low priced graduation lands pushed them up, not sales of $1.25 land.[82] Naturally, government income from land sales shrank sharply during these years when warrants constituted the principal land office money, but until 1858 this was not a serious matter. In 1836, income from public lands had constituted 48 percent of the government's entire income; by 1853, receipts from land sales had declined to 2 percent of the total government income. There was an upsurge in 1854, 1855, and 1856 when the income from land sales was 11, 17, and 12 percent respectively but it fell back to 2 percent in 1861 and to a minuscule three-tenths of 1 percent in 1862.[83]

Bitterness Toward Bounty

There was a good deal of bitter feeling about the bounty land acts in the public land states, especially in Iowa, Wisconsin,

[82] Paul W. Gates, "Charts of Public Land Sales and Entries," *Journal of Economic History*, XXIV (March 1964), 22 ff.

[83] Calculated from data in *Historical Statistics*, p. 712.

Minnesota, and Kansas, where large quantities of land were engrossed by capitalists with warrants. It was said that they neither developed their land nor would they sell after 1857 because of the fall in prices. Oliver Hudson Kelley, who later became famous as the founder of the National Grange, expressed this resentment in 1863:[84]

> The law which allowed non-residents to patch up the country with land warrants, entailed upon some portions of our State [Minnesota] a curse not yet removed. There are thousands of acres yet held by non-residents that have never had a farthing expended upon them for improvements, and their owners continue to pay taxes in the vain hope that the lands may yet rise in value, and then be sold to advantage. Fortunately the land warrants were located upon the most inferior portions of our State and but very little of these portions can find cash customers at two dollars per acre until the government lands are all secured; and unless some unforseen inflation of real estate should occur, much of the land never will bring the first cost and taxes up to the present time.

It was this experience that later made the western Representatives and Senators oppose the agricultural college act (Morrill Act) because it proposed to give scrip to the states. Western Representatives feared the scrip would likewise be used by speculators in large blocks, and of course they were quite right.

On the other side of the ledger must be placed the obvious fact that though speculators were enabled to engross much larger acreages by virtue of the issuance of the warrants, settlers also had the opportunity to acquire lands at lower prices than they would have paid otherwise, and part of their funds were freed for the purchase of farm implements and livestock. The warrants reduced the cost of land in the years before the Graduation Act, which lowered the price of all land available for private entry and unsold for 10 or more years after being offered.

Dealers in land warrants flourished in all large centers, buying and selling warrants at a few cents an acre profit. For example, Thompson Brothers whose "Bank Note Reporter" was one of the most reliable, provided the following quotations on the different warrants in May 1859: 40-acre warrants were bought at $1.00 per acre and sold for $1.10; 80-acre warrant quotations were 88 and 92 cents; 120-acre warrants, 78 and 82 cents; and 160-acre warrants, 82 and 85 cents. The price in western land office towns was commonly 3 cents an acre above New York or Washington prices.[85] Dealers and buyers ran considerable risks in purchasing land warrants for many had been secured from the War Department by persons falsely claiming relationship to deceased soldiers. In such cases caveats were entered against the delivery of the patents. In 1856 there were 59,190 warrants on which caveats had been filed, thereby suspending further action on patenting. Nor was forgery of assignments uncommon, nor were assignments that did not conform to the requirements established for the protection of the warrantee by the General Land Office. Many warrants had to be returned to the warrantees for proof of assignment after they had been accepted for entry at a western land office and transmitted to the Commissioner in Washington. All such difficulties involved the registers and receivers in additional correspondence, the entryman was delayed in getting title to his land, and the broker was compelled by the guarantee he had given to carry the warrant back to the original owners for proper certification of assignment. Notwithstanding all these difficulties, Cyrus Woodman, one of the most extensive land brokers in the West, through whose hands went hundreds of warrants, said that the shinplasters and other paper that passed as currency in the West were so unreliable that receivers often declined to accept them and in consequence speculators pre-

[84] Commissioner of Agriculture, *Report*, 1863, p. 35.

[85] *St. Paul Pioneer & Democrat*, May 12, 1859, quoting Thompson Brothers.

ferred to carry with them bounty warrants as they traveled from land office to land office.[86]

Government administrators of pensions and bounty land grants to soldiers must have had to exercise the greatest patience, for claims within their jurisdiction remained unsettled for many years. As late as 1906 claims under the acts of 1847 to 1855 were being considered and in that year 55 warrants were issued for 8,080 acres. It is hard to understand why soldiers, officers, and others waited so long to press for their warrants, as the accompanying table shows they did, and it is equally puzzling why, once the warrants had issued, their owners delayed so long in making entries with them. Twenty-nine years after the last major bounty land act was adopted there still remained 22,202 warrants for 2,535,940 acres unutilized. In 1906 the Commissioner of the General Land Office reported 18,832 warrants of all acts outstanding for 2,149,660 acres and of these 174 warrants were of the 1811 and 1812 acts.[87]

Year after year the Commissioner of Pensions complained about the tens of thousands of applications for military bounty warrants that were suspended for fraud, or because the warrant had already been issued to the proper person, or because of uncertainty as to the rights of the applicant. Elaborate specifications were established for having the warrants assigned before witnesses and indeed the process of obtaining them was made sufficiently complicated that many people were forced to hire lawyers to obtain the warrants to which they were entitled. Lawyers, agents, and brokers advertised that they would secure 160-acre warrants for $10, 80-acre warrants for $8, and 40-acre warrants for $5. One agent announced that his charge might be less than this rate, depending on the amount of labor he had to expend, and that no charge would be made if he were unsuccessful.[88] All efforts to tighten the application process and the indictments and prosecution for forgery and other illegal actions failed to end abuses.[89] Ten persons were convicted and sentenced to prison for presenting false and forged bounty land claims in 1857 and other indictments were pending. In 1872, after the number of applications had greatly increased and there was grow-

Issue of Warrants and the Entries of Warrants for Land[a]

Year	*Issue of Warrants*		*Acreage of Warrant Entries*
	Number	*Acres*	
1855	38,375	4,393,680	1,345,580
1856	139,162	16,891,890	8,382,480
1857	41,483	5,952,160	6,283,920
1858	13,815	2,034,420	5,802,150
1859	6,801	1,030,860	2,914,700
1860	6,009	939,060	2,782,780
1861	5,341	834,720	2,017,440
1862	1,636	257,860	611,827
1863	602	94,280	464,682
1864	1,792	283,760	515,900
1865	1,161	184,560	184,560
1866	406	63,860	403,180
1867	954	148,960	476,760
1868	1,077	167,720	512,523
1869	1,650	260,040	449,780
1870	1,758	277,200	512,360
1871	2,598	406,160	525,920
1872	443	68,040	389,460
1873	340	52,160	214,940
1874	234	35,640	133,160
1875	407	63,560	137,000
1876	124	16,760	137,640

[a] Compiled from *Annual Reports* of the Commissioner of Pensions and the Commissioner of the General Land Office. The Commissioner of Pensions kept the bounty records for fiscal years ending on September 30, whereas the General Land Office's fiscal year ended June 30.

[86] Large land buyers had to pay a premium on gold, and it was too easily stolen and too heavy to carry in quantity. Cyrus Woodman, March 8, 1854, to C. C. Washburn, Letter Book IV, *Woodman MSS.*, Wisconsin State Historical Society.

[87] *GLO Report, 1906*, p. 537.

[88] *Michigan Telegraph* (Kalamazoo), Jan. 8, 1851; *H. Ex. Doc.*, 35th Cong., 1st sess., Vol. II, No. 2 (Serial No. 942), p. 704.

[89] Secretary of the Interior, *Annual Reports*, 1871, p. 389; 1872, p. 330; 1874, p. XX.

ing doubt as to the rights of these late applicants, the Commissioner of Pensions began to subject applications to even more rigid inspection and to demand additional evidence in support of them. As a result he reduced the number of warrants issued from 2,598 in 1871 to 443 in 1872 and 340 in 1873. In 1874 there were more than 100,000 suspended warrants which could not be dropped. They provided loopholes for unscrupulous warrant dealers and others to forge additional evidence to gain the desired warrants.

The whole history of bounty land grants is marked by the efforts of speculators, politicians, brokers, and other dealers in land paper to take advantage of unsophisticated people who did not know how to obtain their warrants or how to market them. On the other hand many veterans did receive perhaps a fair return from their rights, a few did enter lands in the West with their warrants and many others were able with the warrants to get land there at lower prices than the government minimum. But the cost to the country was out of proportion to the benefits obtained by those the legislation was intended to assist.[89]

Other forms of land paper, issued in smaller quantities, possessed privileges denied to holders of the military warrants. It has been seen that the latter could not be offered at a public sale, being only subject to entry after the sale was over. They could not be used to enter unoffered land; they could be used to enter 80 acres of double-minimum priced land but only with the payment of an additional $100. Revolutionary bounty land scrip, which was available in small quantities, could be used to pay the other half of the double-minimum price within railroad grants and because of this advantage and its scarcity the Revolutionary land scrip sold for 5 to 15 cents an acre more than the warrants. Sioux Half-breed, Soldiers' Additional Homestead, and Valentine scrip could be used to enter unsurveyed land and Sioux scrip could be used on double-minimum priced land; hence these forms brought higher prices than warrants.[90]

Soldiers' Additional Homestead Rights

With the outbreak of the Civil War and Lincoln's call for volunteers it was natural for members of Congress and the public to think of offering bounty lands to induce enlistments, as had been done in every major war in the past, for after the first patriotic fervor had subsided it proved difficult to fill up the necessary regiments. When the homestead bill was under discussion in the House, William S. Holman, a Democrat from Indiana and a strong advocate of free lands—but not as certain about the justice of Lincoln's efforts to restore the Union—proposed an amendment to give every person who served in the Army or Navy for 60 days or more a 160-acre land warrant. The same amendment was introduced in the Senate by John S. Carlile, a conservative Democrat of Virginia. They made a sufficiently emotional plea to reward the soldiers that other land reformers like George W. Julian and Schuyler Colfax of Indiana and William Kellogg of Illinois joined in the move to reward soldiers with land bounties. In the course of the discussion it was brought out that at least 100 million acres of land would be required to fulfill the obligations the measure would entail, that the issuance of this many warrants would depress their price well below the current price of warrants—50 or 60 cents an acre—and would benefit speculators who would use them to accumulate large holdings.

Caleb Smith, Secretary of the Interior, pointed out that there were only 78,662,000 acres of public lands surveyed and proclaimed for sale and therefore subject to entry by warrant holders. An additional 55,555,000

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[90] Jost, "Entrepreneurial Study of a Frontier Financier," p. 18.

acres had been surveyed but not proclaimed and it had been assumed that these would be withheld for settlers and preemptors and not open to large entries by holders of warrants. Notwithstanding the evidence that soldiers had profited little from emissions of bounty warrants in the past and that such an emission would absorb much of the better land still in the possession of the government, and that real farm makers would gain little from the homestead bill if such a quantity of land went to speculators, Holman insisted, as did most conservative Democrats who were unhappy about the war, on supporting to the last an amendment to the bill to grant bounties to soldiers. The amendment was withdrawn by a parliamentary maneuver, thus avoiding a public vote on the question in the House; in the Senate it was defeated by a vote of 28–11. The measure then finally passed as a straight homestead act.[91]

Had the military bounty amendment been approved it would actually have required well over 233 million acres. Since the total acreage of final homestead entries to 1961 was 270,216,874 acres, one may wonder what effect the grant of this huge acreage to veterans would have had on the subsequent history of the West.[92]

Veterans of the Civil War had to wait 5 years before Congress got around to giving them some advantage in land matters for their services. In 1870 they were authorized to homestead on 160 acres of government double-minimum priced land in the primary grant area of railroads, whereas nonveterans could only homestead on 80 acres. By the Soldiers and Sailors Act of June 8, 1872, veterans honorably discharged were allowed to count their period of service toward the 5 years homesteaders were required to live on their claims thereby shortening the period to as little as one year, which was required of all. Veterans who had homesteaded on 40, 80, or 120 acres were allowed an additional entry of 120, 80, or 40 acres.[93]

As originally provided in the Act of June 8, 1872, soldiers' additional homestead rights were to be located on land contiguous to the original homestead. This was changed by an Act of March 3, 1873, to make the rights assignable and locatable anywhere on unoffered land open to homesteading. Thus was created a form of scrip that had none of the disadvantages of military bounty warrants and agricultural college scrip, which could only be used on offered land or, in the case of some of the warrants, on unoffered land only as preemptions. According to the Commissioner of the General Land Office, the Act of 1873 breached a policy which had "for some years past withheld from public sale the lands of the United States, and prevented any accumulation of bodies of land subject to private entry, reserving the public domain for the benefit of actual settlers only," a policy, one might observe, which had been more honored in the breach than in the observance. He added that speculators learned the advantages of the new rights and proceeded to round them up quickly, for with them could be secured land not otherwise obtainable except through fraudulent use of homestead or preemption entries. They were used to acquire prompt control of choice tracts of pine, or watering spots in semi-arid regions, that would have taken from 6 months to 5 years to acquire legally as homesteads. The

[91] Clement Vallandigham, later to be denounced as a copperhead, made the ablest speech in opposition to granting land bounties. *Cong. Globe*, 37th Cong., 1st sess., Dec. 18, 1861, pp. 133 ff.; Feb. 28, 1862, p. 1033; and April 1, 1862, pp. 1916, 1951.

[92] I have arrived at the 233 million acres by estimating the number of men who would be entitled to receive the bounties as 1,461,000, basing my estimate on Thomas L. Livermore, *Numbers & Losses in the Civil War in America: 1861–65* (Bloomington, Ind., 1957), p. 51. The total acreage of final homesteads is from *Homesteads*, a brochure prepared by the Bureau of Land Management, U.S. Dept. of the Interior.

[93] Acts of July 15, 1870, April 4, June 8, 1872, and March 3, 1873, 16 Stat. 321, 17 Stat. 49, 333, 605.

soldiers' additional homestead rights thus attained a value well in excess of the minimum price for land. In 1876 they were quoted as high as $10 an acre.[94]

Inasmuch as the rights, when entered, seem to have been listed along with homesteads, it is impossible to segregate them statistically, but we do know that one smart landlooker in Wisconsin acquired well over a hundred rights which he used to enter pinelands. We also know that fraud in the use of these rights caused the Commissioner of the General Land Office to set up elaborate provisions to separate the honest grants from those obviously fraudulent. In June 1878, he reported that of 2,744 rights submitted for examination, 2,131 were approved, 451 were rejected, and 159 were suspended for further examination.[95]

In 1879 the number of soldiers' additional homestead applications filed was 1,868, of which 1,042 were approved and certified, 270 were suspended, and 556 were rejected. The General Land Office tried to maintain that the rights under the act were not assignable but lawyers seemed to find a way around every additional tightening of restrictions.

With the Spanish-American War and the War for Philippine Independence Congress provided that persons serving in the Army or Navy for 90 days should have the same rights earlier given to the veterans of the Civil War. A decision of the Supreme Court in 1895 made the rights assignable.

Fraudulent rights continued to badger the Land Office. In 1902 and 1903 the Commissioner reported that a systematic conspiracy for the purpose of defrauding the government through the use of these rights was discovered in Arkansas and 24 convictions were obtained. Penalties as high as 7 years at Fort Leavenworth and fines as high as $1,400 were levied. Only by eternal vigilance could the Land Office catch up with, but never anticipate, the misuse of the land laws.[96]

The End of Warrants and Scrip

A century after most of the military land warrants and various forms of scrip had been authorized they were still dribbling into the land offices where individuals were trying to enter land with them. As with so many other land laws there seemed to be no end of the trouble they could cause. To meet this situation Congress ordered on August 5, 1955, that scrip of all descriptions—Valentine, Sioux Half-breed, Supreme Court, Surveyors General, Soldiers' Additional Homestead, Forest Lieu, and Bounty Land—be presented for recording within 2 years. Claims not presented were not to be accepted thereafter. On July 27, 1962, the Secretary of the Interior was authorized to offer by mail to purchase all

[94] In 1873–75 Henry C. Putnam paid $65 for 40-acre additional homestead rights, $135 for 80 acres, and $175 for 120 acres. He tried to pay less and sometimes did. One may judge from the anxiety he showed in rounding up the rights that he valued the land much higher than these prices suggest. He also used dummy entrymen to secure for him choice tracts of pine in Wisconsin which he could not buy. Putnam Letter Books, 1873–1875. Also Lawrence B. Lee, "Kansas and the Homestead Act, 1862–1905" (Ph.D. dissertation, University of Chicago, 1959), pp. 163–66. Lee found 363 soldiers' additional homestead entries in 27 Kansas townships between the 97th and the 99th meridians and estimated that this represented one-fourth of the acreage acquired through homestead in those townships.

[95] *H. Ex. Doc.*, 44th Cong., 2d sess., 1876–77, Vol. IV, No. 1, Part 5 (Serial No. 1749), 119–27; *GLO Annual Report, 1878*, p. 44. My chief source of information concerning the use of soldiers' additional homestead rights was the letter books of Henry C. Putnam of Eau Claire for the 1870's and 1880's, owned by his daughter.

[96] *GLO Annual Report, 1903*, p. 12 and *GLO Annual Report, 1905*, p. 322. By 1905 a total of 20,378 soldiers' additional homestead entries had been made for 1,630,040 acres. At this late time the Commissioner said, "the real beneficiaries at this time seem to be speculators and dealers in land claims."

valid unsatisfied land warrants that had been recorded at $1.25 an acre. If owners of warrants did not accept the offer the warrants were not to be accepted for recording or for acquisition of land. Similarly, an Act of August 31, 1964, provided that land scrip was to be null and void after January 1, 1970, and soldiers' additional homestead rights were to be outlawed on January 1, 1975.[97] In this way Congress tried to end once and for all the scrip and warrant nuisance.

[97] 69 Stat. 535; 76 Stat. 246; 78 Stat. 751.

CHAPTER XII

Grants to States on Admission to Union

Whether or not the Federal Union was developing a "sense of Mission" in the 1780's there is clear evidence that Americans were planning the creation of new states beyond the Alleghenies to be carved out of the area ceded to the United States by Great Britain and by the Original States with western land claims. (See map, page 76) New states in the region beyond the Ohio were contemplated by Virginia in its Act of Cession of December 20, 1783, wherein it is stated:[1]

> the territory so ceded shall be laid out and formed into States . . . and the States so formed shall be . . . admitted members of the Federal Union, having the same rights of sovereignty, freedom and independence as other States. . . .

The act of cession also declared that

> all the lands within the territory so ceded . . . shall be considered as a common fund for the use and benefit of such of the United States as have become or shall become members of the confederation . . .

Having acquired control of a rich territory, Congress proceeded to establish a system of government for it and rules for disposing of the land.

The Northwest Ordinance of 1787 was simply an act of the Congress of the Confederation, and therefore subject to whatever revision any later Congress might wish to make. Nevertheless, it became something more because of liberal features written into it and the great prestige it early acquired as part of American democratic traditions.[2] It provided for three stages of government for the territories and states into which the region was to be divided. Article V stated that:

> whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed, shall be republican and in conformity to the principles contained in these articles . . .

This proviso implies that Congress should determine whether the time had come to receive the new state into the Union.[3]

At the very time the Congress of the Confederation sitting in New York was considering the Northwest Ordinance, the Constitutional Convention of state representatives meeting in Philadelphia was preparing Article IV, Section 3 of its document dealing with the admission of new states into the Union.

Editor's note: In conjunction with this chapter, refer to App. C.

[1] Henry Steele Commager (ed.), *Documents of American History* (New York, 1944), pp. 119–23.

[2] See for example Joseph Story's encomium on "the famous ordinance" of 1787 in which he called it "the model of all our territorial governments . . . equally remarkable for the brevity and exactness of its text, and for its masterly display of the fundamental principles of civil and religious liberty." *Commentaries of the Constitution* (3 vols., Boston, 1933), III, 187. Elsewhere Story called the ordinance a "notable and imperishable monument," III, 190n.

[3] Commager, *Documents*, pp. 131–32.

As finally drafted, it provided:

> New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the Jurisdiction of any other States; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

A notable difference between the wording of this provision in the Constitution and the provision in Article V of the Northwest Ordinance respecting admission of new states is the substitution in the Constitution of "may be admitted" for "shall be admitted."[4]

Vermont

Little time passed under the new Constitution before Congress was faced with questions concerning the admission of new states. Vermont, in fact, had long been a problem because of its resistance to the efforts of New York and New Hampshire to control it. The little state had once been a part of the dominion of New Hampshire, whose Governor had granted away much of its land. When freed of New Hampshire's control by the Crown in 1764, it had been taken under the control of New York, which voided the New Hampshire grants and made new grants of its own. Vermonters, refusing to be controlled by either of these states, set themselves up as an independent state in 1777, and though they fought alongside the Americans in the Revolution, they still remained independent and outside the Union because of their conflict with New York over titles. These issues were settled in 1790 when Vermont agreed to pay an indemnity to New York for the land it claimed and had granted. In January 1791, Vermont ratified the new Federal Constitution. President Washington then sent Congress documents expressing the consent of New York to the admission of Vermont and a request from Vermont that it be admitted "as a distinct member of the Union." Everyone seemed happy that the long years of wrangling over the status of Vermont were over and Congress on February 18, 1791, consented in its shortest admission act that on March 4, 1791 "Vermont shall be received and admitted into this Union, as a new and entire member of the United States of America."[5] Vermont was the only state admitted into the Union without conditions of any kind, prescribed either by the Congress or by the state from which it was carved.

Kentucky

Virginia's trans-Appalachian territory south of the Ohio attracted settlers and land speculators even before the Revolution, but the flood-tide of landseekers set in afterwards. Conscious of interests different from those of tidewater Virginia, the trans-Appalachian settlers called a convention in 1784 to appeal to Virginia for separation and the right to petition the Confederation for admission as a separate state. Then began a long struggle which produced 10 successive conventions, a number of drafts of constitutions, and petitions to Virginia for permission to create a separate state and for support in their efforts to gain admission to the Confederation as the State of Kentucky. In four successive enabling acts Virginia set forth the conditions on which it would allow Kentucky independence. Virginia insisted that title disputes in Kentucky involving grants made by Virginia must be determined by the laws of the mother state. Under this and other features of the enabling acts and of the compact finally made between Virginia and Kentucky, Kentucky bound herself to abide by laws that were subsequently found to be sharply at variance with her own. The application of Virginia land law to title disputes in Kentucky brought about in 1821–23 one of the great constitutional clashes in

[4] Commager, *Documents*, p. 144; Arthur Taylor Prescott, *Drafting the Federal Constitution* (University, La., 1941), pp. 478 ff.

[5] 1 Stat. 191; *Debates and Proceedings of the Congress of the United States*, II, 2013.

American history when the Supreme Court, speaking only for a minority of judges, struck down the occupancy laws of Kentucky because they were held to be in violation of the compact and of Virginia law.

Kentucky and Virginia having ratified the compact and Kentucky in its 10th convention having drafted a constitution, Congress consented that it should be "formed into a new state separate from and independent of" Virginia and be admitted as "a new and entire member." Kentucky thereby entered the Union on June 1, 1792, not under any Federal limitations but under the strict limitations of her compact with Virginia.[6] Vermont and Kentucky when admitted into the Union had retained full ownership of any public lands remaining ungranted and, conversely, the United States had no land within them.

Tennessee

Tennessee, the third state to gain admission, was in a different situation, however, when it sought entrance into the Union. North Carolina had ceded its vacant western lands to the Federal government in 1790; notwithstanding this, it had continued to make grants west of the mountains, contrary to the rights of the United States and to the wishes of the people in what was to be Tennessee. According to the terms of the cession the Federal government owned the vacant land, and Tennessee was therefore a public land state like the other 30 states to be created out of the public domain. However, when Congress moved to admit Tennessee as a state "on an equal footing with the original states, in all respects, whatever" it made no mention of its ownership of the public lands, as it was to do in all subsequent enabling acts except those applying to Maine, Texas, West Virginia, and Hawaii. Because of this omission, Tennessee in 1799 declared that Congress had no claim on her vacant lands. The new state proceeded to create a land office and to provide for the granting of land titles, but may have intended such action to advance its bargaining position *vis-a-vis* the Federal government. When Congress refused to recognize the state's claim to the vacant land, it suspended the making of such grants.

Years of wrangling between North Carolina and Tennessee over the right of the former to make grants in the latter culminated in a compact in 1806 between the two states which was ratified by them both and by the Federal government. It provided for a congressional reservation in western Tennessee where some land had already been granted by North Carolina. The reservation was to be subject to disposal by the Federal government but Tennessee was to have full power to make grants of all vacant land elsewhere in the state. If there was not sufficient land left in the region over which Tennessee had the power of disposal to meet its many promises of land, Congress agreed to provide for that need within the reservation. The compact also provided that Tennessee's rights, title, and claim to the lands in the reservation should cease, and that the lands in it should be wholly exempt from taxes while held by the United States and for 5 years after sale. Tennessee agreed to appropriate 100,000 acres east of the reservation for two colleges, 100,000 acres for the use of academies to be established, one in each county, and 640 acres in every 6-mile square area, where possible, for public schools. Thus in 1806 Congress enacted restrictions on Tennessee that were later to be written into the enabling acts of other public land states. The restrictions, however, were to have little importance, for the lands in the reservation never were actually managed, surveyed, or granted by the United States. The final solution to the vexing question of Federal lands

[6] Act of Feb. 4, 1791, I Stat., 189; Paul W. Gates, "Tenants of the Log Cabin," *Mississippi Valley Historical Review*, XLIX (June 1953), 19 ff.; Thomas D. Clark, *History of Kentucky* (New York, 1937), pp. 110 ff.

in Tennessee came in 1841 when Congress made Tennessee its agent in managing the lands within the reservation, and in 1846 when it gave the state the ownership of the remaining lands and the right to dispose of the funds received from sales since 1841. The requirement in the compact concerning the use of Tennessee's public lands for colleges, academies, and public schools seems not to have been taken seriously or carried out constructively.[7]

Ohio, Proving Grounds for Statehood

The movement of population into the Northwest Territory and the anxiety of some notable Republican leaders, such as Thomas Worthington and Nathaniel Massie, to free themselves from the Federalist control of Governor Arthur St. Clair brought about the admission of Ohio into the Union in 1803. The majority of Ohio's settlers were from states which owned their own lands. There was, therefore, strong feeling that the new state should not be denied rights that the older states enjoyed. However, the Congress of the Confederation had stipulated in the Northwest Ordinance that the legislatures of the new states "shall never interfere with the primary disposal of the soil by the United States . . . nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case, shall non-resident proprietors be taxed higher than residents."[8] The first Congress under the new Federal Constitution had carefully extended the Northwest Ordinance on August 7, 1789, with these safeguarding provisions, thereby making it clear that states thereafter created out of American territory were not to interfere with the management or disposal of the public lands.[9]

These restrictions led Secretary of the Treasury Albert Gallatin in 1802 to propose to William B. Giles of the House of Representatives, which was then considering admitting Ohio into the Union, that the state be offered an equivalent for control over the public lands to which it was being asked to disclaim any right. The equivalent, he thought, should not affect the value of the pledge which the public creditors had been given when the income from the lands was committed for the retirement of the debt, and it should be fully acceptable to the state and prove beneficial to the Union. In addition to these limitations on the states, Gallatin proposed that every tract of public land sold should be exempt from taxes of every kind for 10 years after the completion of the final payment. Gallatin's anxiety to gain revenue from the public lands for the retirement of the public debt blinded him to the harshness of the 14-year period of tax exemption on newly sold land from the date of a purchase on credit, with the possibility that Congress might pass extension laws for the benefit of delinquent debtors and thus prolong their exemption from taxation still further. Since Gallatin's proposal was to apply only to new purchasers, not to landowners already established in the Seven Ranges, the two military tracts, the Ohio

[7] Act of April 18, 1806, 2 Stat. 382; Thomas B. Jones, "Tennessee's Public Lands," MS. Study, author's possession, pp. 24 ff. Frederick L. Paxson, *History of the American Frontier* (Boston, 1924), provides the best general account of state making and admission acts; Earl S. Pomeroy, *The Territories and the United States, 1861–1890* (Philadelphia, 1947), is the standard treatment of the relations between the territories and the United States.

[8] Article IV of the Northwest Ordinance, Commager, *Documents*, p. 131.

[9] 1 Stat. 50. The taxability of Federal land on which homesteaders were making improvements and moving toward ownership, and of land granted to railroads but not patented came into dispute after the Civil War, as Leslie Decker has shown in his admirable study of *Railroads, Lands, and Politics. The Taxation of Railroad Land Grants, 1864–1897* (Providence, R. I., 1964), *passim*. The right of states to tax Federal land, irrespective of any compact they made with the United States, never existed, as shown in Van Brocklin v. Tennessee in 1885, 117 *U.S. Reports*, 151.

Company tract, the Symmes purchase, or the Connecticut Reserve, it would mean a much heavier burden of taxes to be borne by the older settlers who were still struggling to create farms, pay off the obligations on their land, and get the usual social facilities under way. As an equivalent for the four concessions, Gallatin proposed the grant of section 16 in each township for schools (which was included in the Land Ordinance of 1785 and the sales to the Ohio Company and Symmes), the grant of the salt springs, and the use of one-tenth of the net proceeds derived from the sale of public lands for the construction of roads leading to and through the new state.

Gallatin did not specifically raise the question of the constitutional right of Congress to grant lands for common schools, to give away the salt springs, or to use one-tenth of the net income from the lands for roads, but he pointed out that all these provisions would increase the value of the remaining lands and hence would involve no loss to the government or to the creditors of the government and that they would be "highly beneficial and acceptable" to the people of the new states, and would prevent the establishment of a monopoly in the production of salt. Moreover, the roads would be nearly as beneficial to the people of the Atlantic states through which they would pass as to Ohio, would contribute to cementing the bonds of the Union in areas where there had been some disaffection, and would "induce a compliance, on the part of the new State, with the condition proposed by Congress."[10]

Responsive to the clear expression of majority opinion in the Northwest Territory in behalf of admission and reflecting Gallatin's recommendations, Congress on April 30, 1802, adopted the first of a long line of enabling acts authorizing the inhabitants of the eastern district of the Northwest Territory to elect representatives to a convention and to draft a constitution. The act specified how the members were to be apportioned among the counties, when the elections were to be held, and the time and place for the convention, and stipulated that the constitution must be republican. Certain carefully worded propositions were offered to the people of Ohio "for their free acceptance or rejection." The first proposition stated that section 16 in each township, (or its equivalent if 16 was already disposed of) would be granted for the support of common schools. Second, certain salt springs and adjacent land totaling 28,320 acres would be given, but the springs were to be leased, not sold, and for not longer than 10 years at a time. Third, one-twentieth —not one-tenth as Gallatin had recommended—of the net returns from the sale of public lands within the state made after June 30, 1803, would be applied to building roads to and through the new states, the roads to be laid out under the authority of Congress. All this was on condition that the convention should provide "by an ordinance, irrevocable without the consent of the United States" that the public lands when sold should be exempt from taxation for *five* years.[11]

Arthur St. Clair, the Federalist Governor of the Northwest Territory, whose views were sharply at variance with those of the majority in the convention as well as with those of the President and the leadership in Congress, delivered a pointed political attack upon the enabling act at the opening of the convention. The people of the territory, he declared, needed no authorization from Congress to hold a convention. To pretend to authorize one was an interference with the affairs of the territory which Congress "had neither the power nor the right to make." It was not binding on the people and indeed, was a nullity. The promise of section 16 in each township for schools was meaningless for that

[10] *American State Papers, Miscellaneous*, I, 327–28.

[11] 2 Stat. 173–75; William E. Peters, *Ohio Lands and Their Subdivisions* (Athens, Ohio, 1918), pp. 303 ff.

grant had already been made by the Land Ordinance of 1785. St. Clair here seems to have overlooked the fact that the Land Ordinance of 1785, providing for the reservation of section 16 for schools, had not been re-enacted, as had the Northwest Ordinance. The salt springs were most essential for the people of the territory, declared the Governor, but if they were to become revenue producing, as Congress intended, the rents would only add to the price of the salt to the people "so that instead of a benefit, this gift would prove an injury, and an injury that would fall unequally." The promise of a twentieth of the net proceeds from the public lands, he called a "mere illusion; it holds out the prospect of an advantage that will never be realized." The money will be spent on order of Congress, not as determined by the people of Ohio, and it is "coupled with conditions that would defeat it, while they insult us."

St. Clair maintained that the 5-year tax exemption of all lands sold after June 30, 1803, would force the new state to tax lands previously sold and personal property at excessively high rates, which would involve rank discrimination against the first purchasers of land in Ohio. He regarded the tax exemption feature as a limitation upon the sovereignty of the state, and as an "odious distinction" not to be found in the admission acts of Vermont and Tennessee. The Governor's philippic was a devastating attack upon the enabling act and on the compromises the Democratic leaders in Congress had made with their principles. It was an able exposé of his opponents' inconsistencies—and also of his own. St. Clair was too much of a Federalist to go the entire distance and to contend, as the West was increasingly to do, that the public lands ought to be transferred to the sovereign states as they were admitted into the Union to give them the full equality with the older states that had been promised. He urged the convention to reject the propositions of Congress and advised the delegates to draft their constitution without attention to the requirement of an "irrevocable ordinance." If Congress would not admit Ohio to the Union with such a constitution, let her remain a territory. The Governor reminded the convention of the experience of the Vermonters who "had formed their government and exercised all the powers of an independent state" for 8 years before it was admitted.[12] "It would be incomparably better" to remain in the territorial state, concluded St. Clair, than that "we should be degraded" to a less than equal basis with other states.[13]

For his temerity in attacking the enabling act and accusing Congress of "interference" in the affairs of the territory, St. Clair was dismissed from his post as Governor by James Madison, Secretary of State, for "intemperance or indecorum of language toward the legislature of the United States, or a disorganizing spirit of evil tendency and example" and for his violation "of the rules of conduct" enjoined by his public station. Madison's method of dismissing St. Clair was scarcely what might have been expected of such a gentle statesman but was the result of accumulated grievances against the Governor whose actions seemed always to be politically inspired and not in keeping with the views of the majority of people in the territory or in Washington.[14]

The voters of Ohio had elected as delegates to their constitutional convention men who were predominantly democratically inclined, followers of Jefferson rather than Hamilton and the Federalist leaders. The settlers had been very restive under St. Clair and Winthrop Sargent, disliked the undemo-

[12] William Henry Smith, *The St. Clair Papers. The Life and Public Services of Arthur St. Clair* (2 vols., Cincinnati, 1882), II, 592–97; Alfred Byron Sears, *Thomas Worthington. Father of Ohio Statehood* (1958).

[13] Smith, *The St. Clair Papers*, II, 597 ff. Gallatin called the speech "indecent and outrageous." Randolph G. Downes, "Thomas Jefferson and the Removal of Governor St. Clair in 1802," *Ohio Archaeological and Historical Publications*, XXXVI (1927), 62 ff.

[14] Smith, *The St. Clair Papers*, II, 599–601 and note.

cratic features of the Northwest Ordinance, the appointive officers and the veto power, and wished for early statehood. Yet St. Clair's criticisms of the enabling act were not without effect. Therefore, instead of accepting without change the terms offered them for admission they proposed a number of modifications. The delegates asked for the equivalent of one thirty-sixth of the lands within the Virginia Military Tract and the Western Reserve (neither of which were subject to disposal by the Federal government) and for the same amount in the United States Military Reserve for common schools. This proposal would mean a gain of 271,324 acres for schools. They requested that all the lands for education be vested in the state, not the townships, as was proposed by Congress. They also asked not only for 5 percent of the net proceeds of all future land sales but for the same percentage on all sales previously negotiated, and that three-fifths of the money be expended on "laying out roads within the State, under the directions of the Legislature thereof." Thus, instead of the one-twentieth of the net proceeds being spent by Congress on the construction of roads to Ohio, the state wanted three-fifths of that sum for road building within the state, the routes to be determined by its own legislature. The delegates also recommended that the state be permitted to select land from sections 8, 11, and 26, which earlier legislation had reserved from sale in each township, to replace the township promised John Cleves Symmes for a seminary. If Congress would accept these proposals Ohio would consent that all lands the government sold after June 30, 1803, should be exempted from taxation for 5 years from the day of sale.[15]

Congress was willing to make all but one of the changes proposed by the Ohio convention. It declined to let Ohio select from the reserved sections 8, 11 and 26, but it granted a township for a seminary.[16] Ohio actually received 4 percent of its public lands for schools, more than any other state received until, with the admission of California in 1850, new states were granted not one, but two sections in each township or 5.2 percent of their public land for this purpose. By persuading Congress to accept its recommendation that it be allowed 5 percent of the net proceeds of public lands sold after June 30, 1802, instead of June 30, 1803, Ohio received almost $12,000 more than Congress had originally intended. Ohio had certainly come off well in the bargaining, and St. Clair's criticisms may have been partly responsible.

The Ohio Enabling Act did not go unchallenged. Andrew Gregg of Pennsylvania seized the occasion to remind fellow Congressmen that the public lands were common property in which every citizen was equally interested "and to which they all had an equal right." He quoted from the Virginia Act of Cession to show that the lands were ceded for the common benefit of all the states and called the school and 5 percent grants a wholly unwarranted act of usurpation.[17] He was thus laying the basis for the claim of the non-public-land states to share in the returns from public land sales, a subject that was to take up much time in Congress during the 1830's.

Louisiana

In 1804 three territories were created: Orleans, consisting of that part of the Louisiana Purchase south of the 33d parallel (or virtually present Louisiana); Louisiana, that portion north of the same parallel; and Indiana. The Act of March 26, 1804, creating Orleans and Louisiana Territories stipulated that neither the governors nor the legislative councils should have any power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere

[15] *American State Papers, Miscellaneous*, I, 343.
[16] 2 Stat. 226.
[17] *Annals of Congress*, 7th Cong., 2d sess., Feb. 22, 1803, pp. 584–86.

with claims to land. At the same time Congress provided that in the Detriot, Vincennes, and Kaskaskia land districts—then a part of Indiana Territory—section 16 in each township should be reserved for schools and a township should be preserved for a seminary of learning.[18]

In 1811, in one of the numerous acts "to provide for the final adjustment" of private land claims in Orleans Territory, Congress reserved from sale section 16 for schools and two townships for seminaries. The enabling act for the State of Louisiana (previously Orleans Territory), which was adopted 5 days later, consequently does not include the usual propositions or offers of land.

The constitution of the new state was required to contain a provision, irrevocable without the consent of Congress, disclaiming all right or title to the waste or unappropriated lands, and declaring that the public lands "shall be and remain at the sole and entire disposition of the United States; and moreover, that each and every tract of land, sold by Congress, shall be and remain exempt from any tax . . . for the term of five years . . . ." Finally, it was provided that the lands of American citizens who were not residents of Louisiana should never be taxed higher than were those of persons living in the state and that "no taxes shall be imposed on lands the property of the United States." The enabling act did make one concession to Louisiana which it had not allowed Ohio: the 5-percent fund derived from the net proceeds of the public lands was "to be applied altogether to laying out and constructing public roads and levees within the said state as the legislature . . . may direct."[19]

Indiana

Indiana's transition from territory to state was comparatively peaceful. In 1815 the territorial legislature, believing there were sufficient people for statehood, ordered a census which showed 63,897 white males of 21 years and over. In response to a memorial of Indiana, Congress passed an Enabling Act on April 19, 1816. Five propositions were presented to the people of Indiana, including grants of section 16 in each township which was to go to the township, not to the state, as in Ohio; salt springs and adjacent lands to the amount of 36 sections; an additional township for a seminary beyond that reserved in 1804; four sections for a capital building; and 5 percent of the net proceeds from land sales for road construction, of which three-fifths was to be spent in Indiana under the direction of the legislature. In return Indiana was required to adopt the usual irrevocable ordinance, promising that it would not tax lands for 5 years after they were sold by the United States.[20] The propositions of Congress were accepted; Indiana entered the Union in 1816.

Illinois

The pattern of Federal state-making was well established with the admission of Indiana though there were to be numerous deviations thereafter. In most territories the majority of the population was eager for statehood but the larger property owners, fearing heavier taxes and Federal patronage appointees concerned about the prospective loss of their positions, were inclined to be dubious about its advantages. Other problems such as the boundary dispute between Michigan and Ohio kept the former from statehood for a time, and the slavery question delayed the admission of Illinois. The desire of most leaders for admission and full local government overcame any antipathy they may have had to the insistence of Federal authorities that the authorization of Congress was necessary for the calling of conventions, though

[18] 2 Stat. 277, 283.

[19] Acts of Feb. 15, 20, 1811, 2 Stat. 617, 641.

[20] 2 Stat. 266; 3 Stat. 289. In Ohio, Louisiana, and Indiana there were strong elements opposed to the territories moving into statehood. R. Carlyle Buley, *The Old Northwest. Pioneer Period 1815–1840* (2 vols., Indianapolis, 1950), I, 58.

they undoubtedly disliked the detailed prescriptions drafted by Congress for the apportionment of delegates, the election of members of the conventions, and the determination of the time and place for the meetings. It was not the donations of land as much as it was the eagerness for admission that led members of the conventions to accept Federal limitations on the states' powers.[21] At the moment of admission there were few protests against the restriction on state taxation and state interference with the public domain.

Deviations from the normal conditions for admission were caused by changing circumstances in the territories. Illinois, for example, striving to be admitted before Missouri, petitioned in December 1817 for an enabling act although its leaders were uncertain whether the territory had even 35,000 inhabitants. Fearing that Congress would delay action if not convinced by a census that the territory had sufficient population, the local officials ordered one to be taken in 1818 and instructed the census takers to continue to enumerate all persons moving into the territory between June and December of that year, as a large increase of population was expected in this period.[22] In July 1818 the population was shown to be 34,610 and in December, 40,258. Congress had not waited, however, for a census to adopt an enabling act. Illinois was offered, in addition to the usual section 16 in each township, 72 sections or 46,080 acres for a seminary; all the salt springs with adjacent lands; and it was permitted to use its three-fifths of the 5 percent of the net returns from land sales for the encouragement of learning with one-sixth of this fund to be bestowed on a college or university. Illinois was permitted to select half of its seminary lands in small tracts, which gave the state the possibility of securing land of a better quality than Indiana or Ohio secured with their solid township grants. Also Illinois' salt spring bounty, the most generous given, brought it 121,029 acres whereas Indiana had obtained only 23,040 acres, and states admitted from 1837 to 1876 were allowed only 46,080.[23] The state did not get the lead mining lands of the Galena district which it had tried to obtain.[24]

Illinois, like other new states, was required to agree that all government lands should be exempt from taxation for 5 years after sale. It was also obliged to promise that the military bounty lands, which constituted much the largest proportion of privately owned property, should be exempt from taxes for 3 years after the issuance of the patent if held by the patentees or their heirs. This restriction was a severe blow to the young state, for at the time of admission it is doubtful whether there were 10,000 acres subject to taxation. Moreover, as has been seen, the failure of absentee owners of bounty lands to pay their assessments led to the issue of thousands of tax titles which complicated the land and title problems of the state for years to come.

Mississippi

American possessions south of Tennessee were made Mississippi Territory in 1798. In 1817 the Territory of Alabama was cut off and assigned the tier of counties west of the Mobile and Tombigbee Rivers, and Mississippi was authorized to form a constitution for admission as a state. One of the first actions of the convention was to memorialize Congress urging that the eastern boundary

[21] Logan Esarey, *Governors' Messages and Letters, Messages and Letters of William Henry Harrison*, (2 vols., Indianapolis, 1922), II, 729–30.

[22] Francis S. Philbrick, *The Laws of Illinois Territory, 1809–1818*, "Collections of the Illinois Historical Library," XXV (Springfield, Ill., 1950), 315–17.

[23] George W. Knight, "History and Management of Land Grants for Education in the Northwest Territory," *Papers of the American Historical Association*, Vol. I, No. 3 (New York, 1885), p. 37.

[24] Acts of May 18, and Dec. 3, 1818, 3 Stat. 428, 536; Solon Justus Buck, *Illinois in 1817* (Springfield, Ill., 1917), pp. 207 ff., esp. 227.

of the state be extended to these two rivers. Delegates to the convention had another cause of complaint. A clause in the Mississippi Enabling Act declared that the usual three-fifths of the net proceeds from public land sales would not be available for canals and roads until the Federal government had been reimbursed for the $1,250,000 it had paid to Georgia for the relinquishment of its western lands (Mississippi was part of the territory ceded by Georgia) and for the $5 million of scrip (acceptable for public lands) it had issued to investors in the Yazoo land companies as reimbursement for losses they claimed to have sustained. Although piqued by the boundary, and by the requirement that the expenditures mentioned should come out of funds they would otherwise have been entitled to for internal improvements, Mississippians prepared for statehood. The convention accepted the usual propositions advanced by the Federal government, qualified as noted and entered into the usual "ordinance, irrevocable."[25]

Alabama

One naturally asks how Alabama fared in view of the fact that it, like Mississippi, was part of the territory ceded by Georgia and was set off as a separate territory only in 1817. By the Act of March 2, 1819, authorizing the people of Alabama to hold a convention, the new state was promised the standard gifts of land and revenue. In return Alabama made the usual disclaimer concerning Federal ownership of lands, and enacted the usual "ordinance, irrevocable."[26] Nothing was said at the time about deductions from the three-fifths to meet the payment to Georgia and to provide for that portion of the Georgia scrip for which Alabama was held responsible. The people of Alabama may have thought they had done well and had avoided this burden. If so, they were mistaken. On May 3, 1822, Congress required the withholding of the 3 percent until both obligations had been met.[27]

Missouri

The admission of Missouri was delayed by the clash over slavery and the adoption of the Missouri Compromise. It was finally admitted on March 2, 1821, months after the land law of 1820 had abolished credit sales, which had been the reason given for the 5-year tax exemption on all lands after they were sold. The enabling act for Missouri had, however, been passed beforehand; consequently the state was saddled with this incubus, as all previously admitted public land states had been, and like Illinois it was required to exempt the military bounty lands from taxation for 3 years if held by the patentees or their heirs.[28] To many people it seemed quite unnecessary to retain the tax exemption feature for public land sold after the termination of the credit system. The exemption made lands more salable and assured a higher market value for the 5-year period. New buyers who were profiting from it naturally advocated its continuation; on the other hand the older landowners in new communities, unable to share their burdens with the new settlers, were hard hit by the discrimination.

The 5-year tax exemption feature for lands sold in the first seven public land states admitted into the Union was a great hardship to them and an equally great grievance.

Discontent with the discriminatory provision of the compacts the states were induced

[25] On March 14, 1826, Congress seems to have relented to the extent of authorizing Mississippi to use 3 percent of the net proceeds from public land sales for roads and canals. 4 Stat. 149. Actually, Mississippi ranked sixth among the states in the amount it had received from the net receipts from public land sales by 1965. *Public Land Statistics, 1965*, p. 185.

[26] 3 Stat. 49; Thomas Perkins Abernethy, *The Formative Period in Alabama, 1815–1828* (Montgomery, Ala., 1922), p. 42.

[27] 3 Stat. 674.

[28] Act of March 6, 1820, 3 Stat. 544.

to enter into as part of the process of gaining statehood was expressed in frequent memorials of the legislatures calling for modification, including the right to tax the lands as soon as they were sold or otherwise conveyed, and cession of the unsold lands to the states.[29]

Michigan

Michigan went through a stormy period marked by the "Toledo War" with Ohio over the boundary separating the two states, and a constitutional clash with the United States over its right to enter the Union without an enabling act. We need not detail the story of the "War" over the boundary except to say that Michigan took a position that jeopardized the support of members of Congress from Ohio, Indiana, and Illinois, brought it into conflict with the Jackson administration, and helped delay its admission. Because Congress would not authorize a convention, the Michigan territorial legislature provided for the taking of a census in 1834 which showed a population of 85,856, much more than the minimum established in the Northwest Ordinance for statehood. The people obviously wanted and felt they were entitled to statehood. Although Congress had refused to pass an enabling act, the legislature of the territory in 1835 authorized the election of delegates to a convention, an act which one constitutional authority called revolutionary.[30] Young radical Democrats were in control of the convention when it met in May 1835, but the constitution they drafted, though democratic, was a conservative one. It was submitted to the people and adopted by a clear majority; at the same time a Representative was elected to the Congress, and Stevens T. Mason, the territorial Governor, was chosen to be Governor of the new State of Michigan. Unfortunately the convention's decision on the boundary was still unsatisfactory to Ohio, as well as to Indiana and Illinois, and led Congress to enact that Michigan could be admitted when it accepted the established boundary in another convention called for that specific purpose.

Michigan's new "state" legislature adopted a memorial asking Congress for admission and the sanctioning of its "revolutionary" action. To justify its action, it went back to the Northwest Ordinance which called for the creation of three to five states, and stated that "whenever any of the said States shall have sixty thousand free inhabitants therein; such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing . . ." and boldly concluded that no enabling act of Congress was necessary to constitute Michigan a state. It cited the case of Tennessee which was admitted without being previously authorized by Congress to hold a convention and frame a constitution, calling it a practical construction of the Ordinance of 1787. Ohio, Indiana, and Illinois had each needed an enabling act to gain admission, the memorial stated, because they did not have the requisite 60,000 inhabitants at the time they were seeking entrance into the Union. But for Tennessee in 1796 and Michigan in 1835 the "right to form a Constitution and State government was perfect." The memorial concluded by upholding Michigan's right to the disputed territory claimed by Ohio.[31]

The Michigan convention submitted several propositions to Congress for its approval or rejection. One expressed the wish that section 16 be granted to the state for the use of schools, not to the townships; another called for unconditional grants of the saline lands, without restrictions as to their lease or sale; and a third asked for the usual 5

[29] See petitions of Missouri, Indiana, and Illinois of 1828, 1831, and 1835 asking Congress for the right to tax lands when the title was passed by the Federal government. *American State Papers, Public Lands*, V, 622; VI, 298; and VII, 674.

[30] Harold M. Dorr, *The Michigan Constitutional Conventions of 1835–36. Debates and Proceedings* (Ann Arbor, Mich., 1940), p. 15, quoting A. N. Holcombe.

[31] *Territorial Papers*, XII, 1000–1010.

percent of the net proceeds of public land sales of which three-fifths should be for education and two-fifths for road construction. If these and other requests were granted, Michigan would exempt public lands from taxation.

Members of Congress thought the calling of the convention without an enabling act, the drafting of a constitution and of propositions to be submitted to Congress, the approval by the people of the constitution, the election of members to a state legislature, and the adoption of a memorial to Congress were all illegal, the more so because the state insisted on its interpretation of the boundary. In an Enabling Act of June 15, 1836, Congress rejected the propositions in the Michigan memorial and drafted its own propositions, including the promise of section 16 for schools in the form the people of the state wanted it, 72 sections for a university, five sections for public buildings, 46,080 acres of saline lands but with the same restrictions accompanying this donation as were imposed on the other states, and 5 percent of the net proceeds from land sales for roads and canals with no mention of any part for education. If accepted, the state was to enter into an irrevocable ordinance, promising there would be no interference by the state with public land management, no taxation of the public lands, no discrimination against nonresident owners of lands, and no taxing of bounty lands when held by the patentees for 3 years after the patents were issued. In addition, Congress required that the boundaries it had established for Michigan should be ratified by the people in convention.[32] Two more conventions were called to deal with the enabling act. The first refused its assent but the second and more sober one finally ratified the terms of admission and Congress declared Michigan a member state of the Union on January 26, 1837. By its recalcitrance Michigan had lost at least a quarter of a million dollars for roads that it might have received had it compromised the boundary question earlier, for in 1836 the sale of Federal land in Michigan had amounted to $4,189,823, a record never to be equalled by any state. Congress generously made certain, however, that the state should have its share of deposits under the Deposit Act of June 23, 1836.[33]

Although the Michigan convention gave way on the boundary question, it insisted in its ratifying act that Congress "had no constitutional right to require the assent aforesaid as a condition preliminary to . . . admission . . . into the Union. . . ." It was because the "interest and prosperity of the State will be greatly advanced by an immediate admission into the Union" that Michigan people had swallowed their pride and followed the usual route to admission, without, however, giving up on the principle that the territory was entitled to admission without an enabling act and with the boundaries for which it had fought.[34]

Michigan and Arkansas were the first public land states whose enabling acts were adopted after the termination of the credit system and they were the first to be free of the customary provision for 5-year exemption of the public lands from taxes after sales. Although Michigan had no military bounty land district and no bounty lands, Congress, seemingly confused at the moment, included the usual provision for the 3-year exemption from taxes of military bounty lands when held by the patentees that Illinois, Missouri, and Arkansas had previously accepted.

Arkansas

Like Michigan, Arkansas was too impatient to wait for an enabling act and was to have its disagreement with Congress over admission, boundaries, and its share in the public lands. "Animated with a desire for the enjoyment of independence and self-government," the

[32] 5 Stat. 59.

[33] 5 Stat. 144.

[34] Dorr, *The Michigan Constitutional Conventions of 1835–36*, pp. 577–78. I have borrowed heavily from Dorr, pp. 3–52 and elsewhere.

people elected representatives "to meet in Convention at the City of Little Rock, with full and ample powers to make a Constitution and system of State Government for Arkansas." Along with their constitution they adopted a set of propositions to submit to Congress which "if assented to by that body shall be obligatory and binding on the State of Arkansas."[35] In effect, Arkansas like Michigan, was reversing the usual procedure of state-making by proposing propositions to the Federal government. If accepted, the state would bind itself never to interfere with the primary disposal of the public lands, nor to levy a tax on any such lands. Furthermore, the Arkansas delegate in Congress was authorized to "make or assent to such other propositions, or such variations of the propositions herein made as the interests of the state may require," subject to the approval of the Arkansas General Assembly.

Arkansas asked for more generous treatment than any other state had yet received. In addition to the usual section 16 in each township for schools, the territory asked for two sections in each county for an academy. Such a grant would ultimately have produced 192,000 acres. It wanted all the salt springs and one township with each of them, all the Hot Springs and four townships with each of them, and this land was to be at the disposal of the assembly. It asked for one township for public buildings, and 72 sections for a seminary, heretofore granted in the organic act for the territory. It proposed that four-fifths of the usual 5 percent fund should be spent within the state for roads and canals and should be at the disposal of the assembly and that the other one-fifth should go for education. The territory asked for 800 sections (512,000 acres) for internal improvements and wanted roads already under construction (within the state) for which congressional appropriations had been made to be "completed and kept in repair at the expense of the United States." Finally it wanted all public lands open to sale for 5 years or more granted to the state for any purpose it might deem proper. If this privilege had been obtained, by 1850 Arkansas might have come into the possession of more than two-thirds of its entire area, or a larger proportion of its lands than any state except Florida was to receive.

But this was not all Arkansas wanted. One of its propositions was that the western boundary should be extended into what is now Oklahoma to include from a quarter to a third of that area.[36] Arkansas was attempting to include within its boundaries land then belonging to the Creeks and Cherokees, and thus threatening the peaceful relations of the United States with these tribes. Congress promptly struck out the clause and limited the state's boundaries to those of today.

Although Congress was seriously miffed at the action of Michigan in setting up a state government without an enabling act, it was not so upset by the action of Arkansas territory because its territorial ambitions did not bring it into conflict with other states and also because Arkansas did not presume to abandon the territorial organization and replace it with a state government before application had been made or permission granted to enter the Union as a state. On June 15, 1836, Congress enacted that the people of Arkansas Territory, having met in a properly called convention and formed a constitution and state government, and having sufficient population were declared to be a state in the Union on an equal footing with the other states. It was never to interfere with the primary disposal of the public lands nor to tax them. A second act 13 days later gave the new state section 16 in each township, 12 salt springs with six sections of land around each, donated five sections for public buildings in addition to the 10 previously granted, repeated the earlier donation of 72 sections for a

[35] Memorial of the Arkansas Constitutional Convention, Jan. 29, 1836, and Ordinance by the Constitutional Convention, January 29, 1836, *Territorial Papers*, XXI, 1188, 1189 ff.

[36] *Territorial Papers*, XXI, 1189–91.

seminary in the organic act for Arkansas Territory, and required that the state should adopt an ordinance, with the usual disclaimer. The entire 5 percent of the net proceeds from land sales was to be allowed the state for roads and canals. The state did not get the requested two section grant in each county for academies, the 800 sections for internal improvements, the Hot Springs and surrounding area, or the lands unsold for 5 years, nor did Congress make any commitment to complete or repair roads it had earlier financed.[37]

Florida and Iowa

Almost before Arkansas was admitted into the Union the people of Florida Territory had begun to discuss applying for statehood and the debate was becoming heated. Complicating the question were the territorial banking policy and sectional divisions within Florida which led to proposals to divide it into two territories. A convention was called for 1838, a draft of a constitution was prepared and there was some talk of resorting to the Michigan expedient of organizing a state, electing officers and Senators and a Representative to Congress and asking for admission afterwards. Between 1838 and 1845 Congress paid little heed to the sharp infighting in the territory, partly because the practice of pairing slave and free state admissions was well established and it was known that Florida could not gain admission, certainly as long as it lacked the requisite population, until another free state was ready for admission.[38] Iowa Territory, whose population was mounting rapidly in contrast to the slow growth of Florida, showed little interest in admission at first. It twice voted against statehood, but in 1844 reversed itself, held a convention and drafted a constitution with boundaries that included a part of present Minnesota. With a free territory and a slave territory prepared and asking for admission and each having drafted "republican" constitutions, Congress was prepared to act.

Population Growth of Iowa and Florida

	1830	1840	1850
Iowa	0	43,112	192,214
Florida	34,730	54,477	87,445

In three measures adopted on March 3, 1845, the admission of the two states was authorized. The usual limitations were placed on the states concerning the Federal lands; the northern boundary of Iowa was changed and the constitution of that state was required to be resubmitted to the people with the change incorporated in it; the lands for education and other purposes were specified. Florida was given eight sections of land (5,120 acres) for public buildings, section 16 for public schools, four townships (92,160 acres) for seminaries, including two previously promised, and 5 percent of the net proceeds from land sales for "purposes of education." No salt springs were given. Iowa received section 16 for schools, 46,080 acres (previously granted) for a university, 3,200 acres for public buildings and up to 12 salt springs with six sections adjoining each, on condition that they were never leased for more than 10 years without the consent of Congress. The 5 percent grant of net proceeds from land sales was to be expended by Iowa on roads and canals. Congress required that Iowa adopt an "ordinance, irrevocable" including the usual safeguarding provisions to prevent jurisdictional conflicts over Federal ownership and management of its lands though none had been required of Florida. These safeguarding provisions required that military bounty lands should be exempt from taxes for 3 years if held by the original patentee though there were no military bounty lands in the state.[39]

[37] Acts of June 15, 23, 1836, 5 Stat. 50, 58.

[38] Dorothy Dodd, *Florida Becomes a State* (Tallahassee, 1945), pp. 29 ff. has been indispensable.

[39] Acts of March 3, 1845, 5 Stat. 742, 788, 789.

The Iowa Constitution of 1844 had an unusual provision that complicated ratification:[40]

> This constitution, together with whatever conditions may be made to the same by Congress, shall be ratified or rejected by a vote of the qualified voters . . . *provided, however*, that the General Assembly of this State may ratify or reject any conditions Congress may make to this Constitution. . . .

This provision combined with discontent over the change of the boundary and a series of political events brought about two successive defeats of ratification of the Constitution of 1844, and necessitated calling a second convention. At this second convention in 1846 a northern boundary satisfactory to Congress was adopted, and a constitution much like that of 1844 was drawn up and submitted to the people who ratified it by a very narrow majority. Congress, then, on December 28, 1848, declared Iowa a State.[41]

Maine and Texas

Meantime, Maine and Texas had entered the Union each with backgrounds very different from those of others that had entered since 1802. Maine, as part of Massachusetts, had sent representatives and senators to the General Court at Boston and had been assigned a number of Representatives to the national Congress. But Maine people felt it was better to have their government closer to them. In 1816 the movement for statehood came to a head but it was to take until 1820 before Maine became a State of the Union. Then, by one of its simplest measures, Congress, finding that Massachusetts had given its consent to the separation of the district of Maine and that the latter had adopted a constitution agreeable to the Massachusetts act of separation, declared Maine to be one of the United States "on an equal footing with the original states, in all respects whatever."[42] Thereafter Maine and Massachusetts shared the public lands of the new state in which the United States had no part.

Texas, having won its independence from Mexico in 1836, sought admission into the United States, but the wrangling over slavery made it unwise for Van Buren to take action then. The new republic therefore had to cool its heels for a decade. This could not be allowed to continue, many thought, because Texas might, whether encouraged by Great Britain or not, end slavery and become a refuge for runaways. Also, with Wisconsin growing rapidly there was danger that another free state would be created which would upset the balance between free and slave states. Texas was large enough to be divided into five states. If this were done and each part gained sufficient population to justify admission, it would offset the victory of the North in banning slavery north of 36°30′ by the Missouri Compromise. President Tyler and John C. Calhoun were anxious to annex Texas and resorted to a joint resolution to accomplish their objective. Conditions for admission were: (1) the United States would assume responsibility for the settlement of boundary issues, (2) Texas was to cede to the United States forts, "ports and harbors, navy and navy yards," and all its property pertaining to public defense but was to retain public funds, debts, taxes, and "all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities" of Texas; (3) as many as five states might be formed out of the territory claimed by Texas.[43]

In the joint resolution of March 1, 1845, consenting to the erection of the Republic of Texas into a new State in the Union and in a second joint resolution adopted on December 29, 1845, declaring Texas to be one

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[40] Benjamin F. Shambaugh, *History of the Constitutions of Iowa* (Des Moines, 1902), p. 266.

[41] 9 Stat. 52, 117; Shambaugh, *op. cit.*, pp. 273 ff.

[42] Act of March 3, 1820, 3 Stat. 544.

[43] 5 Stat. 798. The italics are mine.

of the United States, appears the "equal footing" statement found in all previous measures for admission of states.[44]

> Texas . . . shall be admitted into the Union . . . on an equal footing with the existing States. . . . The State of Texas . . . is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

Wisconsin

Meantime, Wisconsin Territory was adding population much faster than Iowa or Florida and at the time of its admission had a larger population (280,000) than all but three states —Maine, South Dakota, and Hawaii—when they entered. Yet its admission was delayed, not so much over controversies with Congress as because of its internal disputes and its dissatisfaction over boundaries. On August 6, 1846, Congress offered it an enabling act with boundaries defined, section 16 for schools, 46,080 acres for a seminary of learning, 6,400 acres for public buildings, 46,080 acres at salt springs and 5 percent of the net returns from land sales for canals and roads, while insisting on the usual ordinance.[45]

Wisconsin was not happy about the boundaries separating it from Illinois and Michigan that Congress proposed. Like Michigan earlier, Wisconsin maintained that the boundaries of the territories as defined by the Northwest Ordinance should be held inviolate when they became states. This would have given Wisconsin one or two tiers of counties in Illinois. The alternate reserve sections along the proposed Milwaukee and Rock River Canal, which had been priced at the double minimum, were not worth $2.50 and the people of Wisconsin wanted the price lowered to the usual minimum and preemption rights granted to settlers with improvements. In 1841 Congress had granted the public land states 500,000 acres of land for internal improvements. Wisconsin asked for the right to select these reserved sections as part of the state's improvement grant. Finally, Wisconsin preferred to have the 500,000-acre grant and the 5 percent of the net proceeds from the sale of public lands allocated for the support of schools. These propositions were presented to the Federal government by the convention.

Congress was willing to make only a slight concession to Wisconsin on boundaries, conceded to it the right to use the 500,000-acre grant and 5 percent of the net proceeds for schools, even though the intention of both grants was to aid in building roads and canals that would make the public lands more marketable, and agreed that the alternate even sections along the canal route should be priced at $1.25 an acre and that settlers on them who had made improvements should have the right of preemption. Wisconsin had done well in bargaining with the Federal government but perhaps its most important contribution to Federal-state negotiations over sharing public lands resulted from its deep concern for public schools. John A. Rockwell, Representative from Connecticut, touched by that concern and the willingness of the people to put schools above internal improvements, said that he favored enlarging the grant for the public schools and proposed an amendment to the final act for the admission of Wisconsin to add section 36 to section 16 for schools in each township. The amendment was ruled out of order though support for the move came from the Acting Commissioner of the Land Office who said in his annual report for the same year, "The expedience of making further provision for the support of common schools in the land States had attracted much attention, and certainly is worthy of the most favorable consideration." In 1848 Rockwell revived the move to grant section 36 in addition to 16 for schools and succeeded in getting such a pro-

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[44] 5 Stat. 798; 9 Stat. 108. The Supreme Court held in 1949 that when Texas entered the Union it relinquished a part of its sovereignty and became equal in all respects to the older states and on this basis Texas, like California, had no right to the tidelands, 339 U.S. 718.

[45] 9 Stat. 56.

vision into the Organic Act for Oregon passed that year.[46]

California

California had the misfortune to ask for admission when there was no slave territory to accompany it, thereby threatening for the first time the balance between the free and slave states. The South seemed to have four choices: it could try to create another slave state—Jacinto—out of Texas with its consent; it might try to divide California, as some residents of that state wished, at a point north of the Tehachapi Mountains and provide for a second state; it might make New Mexico a slave territory and state when it had sufficient population; or it could deny California admission, as many members of Congress advocated. The argument for denial rested on the ground that a military government had improperly authorized the election of delegates to a constitutional convention without waiting for an enabling act which would establish the boundaries of the state, regulate the time, place and manner of holding elections, and determine the qualifications of voters, and that the military government had paid the cost of the convention out of customs duties without any authorization to do so.[47]

Still another objection against the admission of California under the plan drafted at its convention was raised by Pierre Soule, Senator from Louisiana. It may seem farfetched today but was seriously debated at the time. He maintained that if California were admitted without having first been authorized to hold a convention by Congress, the public lands would escheat to the state. Actually, it was the fear that the admission of California would put the anti-slavery states in a majority that induced such bitter southern opposition.

The Constitutional Convention, which met in Monterey in September and October 1849, gave some attention to the public lands and to the expected share California might have in them. The most extreme statement was made by M. M. McCarver, a 42-year-old Kentuckian who had come to California by way of Oregon. He proposed a resolution that "the public domain within the limits of this State, in right and justice, belongs to the people of California, and the undisturbed enjoyment thereof ought to be secured to them." This resolution received little support and was rejected without a division. Stephen A. Douglas later tried to explain it away in the Congress, denying that it represented the thought of any body of opinion in California or anywhere in the West.[48]

> We have never acted upon the principle that ownership of soil is an essential ingredient of sovereignty. . . . The United States Government . . . has never held one foot of land by virtue of its sovereignty. Sovereignty was not the title by which we have claimed or held one acre of our public lands. We hold the lands by virtue of the same title that an individual possesses his own estate. The Government holds its lands by deeds of conveyance.

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[46] *H. Ex. Doc.*, 29th Cong., 2d sess., Vol. II, No. 9 (Serial No. 498), p. 6; Matthias Nordberg Orfield, *Federal Land Grants to the States with Special Reference to Minnesota* ("University of Minnesota Studies in the Social Sciences," No. 2, [Minneapolis, 1915]), p. 44; *Cong. Globe*, 30th Cong., 1st sess., May 10, 1848, pp. 752 ff.; 9 Stat. 56, 178, 233. Also useful is Milo M. Quaife, *The Attainment of Statehood*, "Wisconsin Historical Collections," Vol. 29.

[47] *Cong. Globe*, 31st Cong., 1st sess., Feb. 20, 1850, p. 397. It was this action taken by the military governor and the election of delegates, the meeting of the convention, the drafting of the constitution, that southerners argued was all illegal and revolutionary, whereas the advocates of admission were not troubled by the cry of illegality. Those who regarded the calling of the convention and its activiites as illegal had the satisfaction of writing into a law to sanction the payment of all the expenses of the convention a clause stating: "which expenses may appear to have been proper and necessary, but not authorized by any law of the United States. . . ." Act of Feb. 5, 1853, 10 Stat. 155.

[48] *App.*, *Cong. Globe*, 31st Cong., 1st sess., June 26, 1850, p. 848.

Another resolution stirred up much discussion.[49]

> Resolved, That the Congress . . . be, and they are hereby respectfully, but earnest solicited, to give up to the people of California for a series of years, or so long as may be deemed expedient, all the revenue which may be derived from the renting, leasing, or otherwise authorized occupation of the gold placers.

William M. Gwin, one of the most influential members of the convention and later elected United States Senator, proposed that the 500,000 acres to which the state would become entitled when it entered the Union be used "to select the best from the gold mines." If the proceeds were funded and the interest applied to the support of schools, California would have a noble endowment sufficient for the education of every child in the state, other members maintained.[50] Still another resolution introduced into the Convention by a native Kentuckian predicted that it would be "practically impossible to survey and sell to private purchasers the public lands in California. That the comparatively small space valuable for mining purposes would inevitably fall into the hands of a few speculators, and the vast body of the mining population would either be compelled to cease their labors, or violate a right and a monopoly which would have neither force nor opinion to protect them. That the Congress of the United States is therefore most earnestly requested, should the General Government retain its dominion over the said lands, to allow the free use and enjoyment of the same to all American citizens."[51]

In one of the last days of the convention an ordinance was adopted advancing a number of propositions to the Federal government concerning the public lands. The first called for the donation of one section of land in each quarter-township for schools, or four times the usual amount. Californians were aware of the action taken by Congress on August 14, 1848, reserving sections 16 and 36 for schools in Oregon and though this provision had not yet been extended to California there was reason to believe it would be.[52] Gwin persuaded the convention to go farther and ask for four sections in every township, or one-ninth of the public lands. Not until many years later, when Arizona and New Mexico were asking for admission, was Congress to be as generous as California asked it to be. Other requests of California were: 72 sections for a university "together with further quantities as may be agreed upon by Congress," four sections for public buildings, 500,000 acres in addition to the 500,000 granted to the new states for internal improvements under the Act of 1841 "to defray the expenses of the State Government, and for other State purposes," 5 percent of the net proceeds from land sales for the encouragement of learning, all salt springs and one accompanying section for each spring. Had all that the convention asked for been received, plus the various grants given later, California would have received 14 percent of its total area. With the privilege later acquired of locating its claims wherever it found desirable tracts, the state might have obtained through wise selections the bulk of the good lands not in the private land claims.[53] Pierre Soule read the past record of admissions incorrectly but he was right in saying

[49] J. Ross Browne, *Report of the Debates in the Convention of California on the Formation of the State Constitution* (Washington, 1850), p. 347. Douglas was wrong in saying there was no support for the McCarver resolution. At a different time, when it was voted down without a division, Charles T. Botts, a Virginian and confirmed states' righter and defender of slavery, expressed his support but felt the convention was not the appropriate place in which to raise the question; it should be left to the legislature to request Congress for the cession of the lands. Also, W. M. Steuart, formerly of Maryland, was close to supporting cession. *Ibid.*, pp. 347, 460.

[50] *Ibid.*, pp. 348 ff.

[51] *Ibid.*, pp. 430–31.

[52] 9 Stat. 330.

[53] Browne, *Report of the Debates*, pp. 467–72.

that California was asking land "far exceeding any grant that was ever made to any other new state."[54]

After one of the longest and angriest debates on record, in which the pro-slavery Senators and Representatives, a minority of both Houses, virtually halted the business of Congress while they spun out theoretical discussions, as farfetched as that of Pierre Soule, concerning the danger that California might assume ownership of the public lands within its borders, Congress finally was permitted to vote on a bill to admit California. On August 13, 1850, the Senate passed the measure by a vote of 34–18 and on September 7, the House adopted it 150–56.[55] The act contained a tighter disclaimer clause than the usual one for other states. California was admitted on the "express condition" that there should be no interference with the primary disposal of the public lands, that the state should "pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned," should never tax the public lands nor tax the property of nonresidents higher than that of residents. The pro-slavery element in Congress became so emotional and the attacks upon the peculiar institution by the anti-slavery leaders so sharp that Congress made no effort at the time to specify the grants it would allow California and instead added an amendment to the measure providing that "nothing herein contained shall be construed as recognizing or rejecting the propositions tendered in the ordinance of the convention."[56]

Hostility to the admission of California as a free state and the way in which Californians went about creating their state and banning slavery, together with the feeling that its rich endowment in gold made liberality toward it less necessary, may account for the fact that of all public land states it was dealt with in the most niggardly manner. In fact it was not until 1853 that California was assured its share of the public lands.[57] True, it was the first state to be given two sections for public schools, though Oregon had been promised two, and California was given 6,400 acres for public buildings, and 46,080 acres for a seminary (less than Florida).[58] California did not receive salt springs and adjacent sections, 5 percent of the net proceeds from land sales, direct grants for railroads (a small grant of 231,000 acres was quickly revoked) or wagon roads as Minnesota, Kansas, and Oregon had, or the double allotment of land for internal improvements or the four sections in each township that it had asked for. What bothered Californians the most was that unlike Oregon, New Mexico, and all other territories acquired from other countries, its residents were not allowed the same free grants. Also, Californians were distressed that Congress delayed setting up a commission to adjudicate the Spanish and Mexican land claims until 1851 and until 1853 before providing for the survey of public lands and the establishment of land offices. Furthermore, they had good reason to complain that no public lands were open for sale until 1857 and that preemption on unsurveyed lands was allowed only for a limited time whereas in Oregon, Washington, Minnesota, Kansas, and Nebraska Territories preemption on unsurveyed lands was early made permanent.

[54] *App., Cong. Globe*, 31st Cong., 1st sess., June 24, 1850, p. 963.

Soule's argument that Douglas tried to meet, concerning the certainty that California would acquire full ownership of all the public lands within its borders if it was admitted under the proposed legislation of 1850, is in *ibid.*, pp. 960–67.

[55] *Cong. Globe*, 31st Cong., 1st sess., pp. 1573, 1772.

[56] Act of Sept. 9, 1850, 9 Stat. 453.

[57] 10 Stat. 244.

[58] One of the many oddities of land legislation is that Wisconsin, as admitted by the Act of Aug. 8, 1848, was to have only one school section in each township (as provided for in the Enabling Act of Aug. 6, 1846) whereas Oregon by its Organic Act of August 14, 1848, just 6 days after the signing of the Wisconsin measure, was to have two sections.

Congress was to make up for some of this ungenerous conduct more than a half century later—in 1906—when it provided that 5 percent of the net proceeds of all sales should be given to California for the support of schools, and the ruling was made retroactive to 1850. By 1965 the state had received $1,865,666—much more than any other state had received from the 5 percent fund.[59]

New Mexico Refused

Dissatisfaction over congressional slowness in adopting an organic act for the territory of New Mexico led to a movement for statehood in 1850. A convention was called, a constitution was prepared banning slavery, and provision was made for the election of state officers and a legislature. Then followed in July the election of two "senators" and a "representative." Richard H. Weightman, one of the two "senators," journeyed to Washington where he presented his claim for a seat in the Upper House and for the admission of New Mexico. With its anti-slavery provision it was certain to gain short shrift at the Capital. Revolutionary New Mexico was no more welcome than revolutionary California. Instead of admission Congress adopted an organic act on September 4 for the creation of the Territory of New Mexico. Sixty years were to pass before statehood was to be attained.[60]

Kansas

Kansas was the next territory to run up against the pro-slavery forces of the South. Its efforts to gain admission into the Union precipitated the Kansas Conflict which some regard as a forerunner of the Civil War. Anti-slavery leaders in Kansas called for a convention which met at Topeka in 1855 and drafted a free-state constitution. Under the constitution the Topeka free-state government was established. It had no sanction from the Federal government for its existence and was dubbed revolutionary and insurrectionary, though it soon appeared to represent majority sentiment. The territorial government supported by the border ruffians and the official claque of Democrats sent in from Washington then authorized the holding of a convention at Lecompton to form a constitution and state government. The election being carefully rigged, the members were pro-slavery and the constitution they drafted was a pro-slavery document. Submitted to the people in 1858, it was rejected, but Buchanan was not willing to abandon his efforts to make Kansas a pro-slavery state and sent the rejected constitution to the Congress with the recommendation that it be submitted again to the people. The pro-slavery convention also adopted a somewhat unusual ordinance bearing on the public lands, as follows:[61]

> Whereas, the government of the United States is the proprietor, or will become so, of all or most of the lands lying within the limits of Kansas, as determined under the constitution; and whereas the State of Kansas *will possess the undoubted right to tax such lands for the support of her State government*, or for other proper and legitimate purposes connected with her existence as a State: Now, therefore, be it ordained by this convention, on behalf

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[59] The Act of June 27, 1906, granted the state 5 percent of the net proceeds of all past and future sales in support of public schools.

[60] 34 Stat. 518. In later years Congress more than made up for this ungenerous conduct by granting California valuable privileges in the selection of the grants to it. Unlike the other states it was permitted to locate its agricultural college rights on unoffered land, enabling it to net $5 an acre instead of less than a dollar an acre that most states received. It also received its scrip in 40-acre pieces and was not, therefore, compelled as were other states to use a 160-acre piece for a 40-acre tract. The same measure gave the state 30 days after completion of the surveys in which the use of the scrip was the sole way in which entries could be made. Another measure that might have brought great returns to the state had it not been misused by speculators conniving with officials, conceded the state half a million acres of indemnity land for the loss of sections 16 and 36 in confirmed private land claims.

[61] For the Lecompton constitution and the ordinance see *House Reports*, 35th Cong., 1st sess., Vol. III, No. 377 (Serial No. 966), pp. 73–92.

> of and by the authority of the people of Kansas, that the right aforesaid to tax such lands shall be, and is hereby, forever relinquished, if the conditions following shall be accepted and agreed to by the Congress. . . .

The conditions set forth were: (1) sections 8, 16, 24, and 36 in every township should be granted to the state for schools; (2) all salt springs and gold, silver, copper, lead, and other valuable mines together with adjacent sections should be granted to the state; (3) 5 percent of the net proceeds of the sales of all public lands sold or held in trust or otherwise were to be assigned to the state of which three-fifths should be assigned for schools and two-fifths for aid in constructing railroads; (4) two townships were to be granted for a seminary of learning; (5) 5,600,000 acres were to be given the state for aid in the construction of two railroads, one to be built from the northern to the southern boundary and the other from the eastern to the western boundary. Kansas was asking for no more school sections than California earlier had requested but not received, and its request for a railroad grant was not out of line with what other states had by then received for this purpose. Yet its boldness in stating that it had an undoubted right to tax public lands, a right it would only give up if Congress would grant its demands for 24 percent of the public lands within its borders, if we include the 500,000 acres to which it would also be entitled on admission, ought to have bothered the southern states' rights people who were at that very time contending that Congress was supreme in the territories and in effect could make any requirement concerning the public lands for admission.

Actually, Congress boggled at the ordinance but decided to resubmit the rejected constitution to the people with the usual disclaimer provision in return for which the state would receive the usual grants. Congress was not willing to allow the people to outlaw slavery and if the constitution were rejected they were not to have another opportunity to form a constitution and state government until their population had attained the Federal ratio of 93,420 people required for representation in the House. Kansans decisively rejected the constitution and repudiated the pro-slavery attempts to make of it a slave state.[62]

Continued territorial status for Kansas was favored by some groups, notably territorial officials sent in to assure that a slave state would be created or nothing at all and, as elsewhere, by some business interests who feared that once the territory was on its own it would have to resort to heavy property taxes. On the other hand there were many reasons why forward-looking people should favor statehood for with it would come control over school, university, and internal improvement lands, the prospect of gaining road and railroad construction, of getting the state capital located and buildings begun, greater ease in bonding the new state for such internal improvements as it wished to make, and the elimination of the carpetbag, pro-slavery officials.

When the free-state people came into control of the legitimate or "law and order" government in 1859, the Topeka "revolutionary government," as Buchanan loved to call it, was permitted to wither away, no longer being needed. There was a prospect that Kansas might be able to frame a constitution that would receive congressional approval, for "illegitimacy" could no longer be offered as an excuse for keeping her out of the Union. It was not unexpected, then, that the territorial legislature determined in 1859

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[62] 2 Stat. 269 ff.; William F. Zornow, *Kansas, a History of the Jayhawk State* (Norman, Okla., 1957), has the political outline but seems unaware of the significance of the land question in shaping the political history of the territory and state. The majority report of a select committee of the House to report on the Lecompton constitution and two minority reports are in *House Reports*, 35th Cong., 1st sess., Vol. III, No. 377 (Serial No. 966), pp. 1–158.

to call for the election of delegates to meet in convention and to form a constitution and state government. At the resulting convention, held in Wyandotte, a constitution was framed, the third for Kansas, elections were provided for, and the officials elected were strongly in the free-state tradition. Though the members of this convention were contemptuous of the work of the Lecompton convention they borrowed from the ordinance of that convention the claim that the state "would possess the right to tax" the lands of the Federal government, which right they were willing to surrender for certain concessions, including sections 16 and 36 for schools, two townships for a university, one for public buildings, two for the erection and maintenance of eleemosynary institutions, the equivalent of two townships around salt springs, to include the salt springs, 5 percent of the net proceeds from land sales for schools, and 500,000 acres under the Act of 1841 but for schools, not internal improvements.

The admission of Kansas, now not only a free state but Republican, precipitated the usual sharp clash in both Houses of Congress. Southerners were opposed to admission regardless of party as were some northern Democrats, especially those in the Senate who had not yet felt the whiplash of the rapidly rising anti-slavery sentiment. Favorable to admission were Republicans and most northern Democrats. Galusha Grow of Pennsylvania, an ardent advocate of free homesteads, was in charge of the bill in the House and reported for the majority of the Committee on Territories in favor of admission. He met the arguments of opponents by showing (1) that Kansas had followed the lead of 11 of 20 new states which had proceeded to form a constitution and government without an enabling act, (2) that Kansas in 1860 had more population than in 1857 and 1858, when the slavery party had tried to admit it, and approximated more closely the congressional ratio than a number of other states when admitted, (3) the English bill of 1858 which had required the people of Kansas either to accept the Lecompton constitution or wait until they had the 93,420 was a simple act of Congress, not a compact as some southerners maintained, and was not at all binding on a later Congress.[63]

In the House where the tide of public opinion had swept out many northerners who had previously followed southern leadership on slavery and territorial questions, a bill for the admission of Kansas passed by a vote of 134–73 but in the Senate the measure was debated and then passed over by votes of 32–27 and 32–26. All six northerners who had refused to support the admission bill either were defeated at the end of their term or wisely declined to run for re-election.[64] When the census figures for 1860 were completed it was found that Kansas had much more than a sufficient number of people to entitle her to admission, and double the number in Oregon for whose admission there had been strong southern support.

In the lame duck session of the 36th Congress the Senate took up the admission bill again, amended it slightly and passed it, 36–16. Five of the six northern votes previously in opposition to admission now were favorable.[65] Admission was to be accomplished but not before Congress struck squarely at that part of the Kansas ordinance declaring that the new state "would possess the right to tax" the public lands. The act of admission stated: "Nothing in this act shall be construed as an assent by Congress to all or to any of the propositions or claims con-

[63] *House Reports*, 36th Cong., 1st sess., Vol. II, No. 255 (Serial No. 1068), and *Cong. Globe*, 36th Cong., 1st sess., April 11, 1860, pp. 1671–72.

[64] *Cong. Globe*, 36th Cong., 1st sess., April 11, and June 6 and 7, 1860, pp. 1672, 2624, 2727. Somewhat different votes are given in the *Senate Journal*, 36th Cong., 1st sess. (Serial No. 1022), pp. 559, 566. Benjamin Wade and Solomon Foot seem to have strayed from their usual path on the first vote.

[65] *Senate Journal*, 36th Cong., 2d sess., Jan. 21, 1861 (Serial No. 1077), p. 128. Gwin, the sixth Democratic Senator who had opposed the admission of Kansas in 1859 did not vote in 1861.

tained in the ordinance . . . ." It then offered the people of Kansas their own propositions, respecting donations of public lands that eliminated the grant for eleemosynary institutions and reduced that for public buildings to 10 sections, provided they would adopt the usual disclaimer ordinance.[66] On this basis Kansas became a free state on January 29, 1861.

Minnesota

Meantime, two additional territories had become states, further assuring that the combination of "Northern Doughface" and Southern slavery interests would not control the Congress much longer. Minnesota, the first of the two, was no more welcomed by the South than Kansas, though there was less reason to oppose its admission because this state came up through the usual procedure favored by Congress, commencing with an enabling act. The delay Minnesota experienced in gaining admission was partly the result of factional and party wrangling within the territory and partly owing to the fact that the attention of a nearly distraught Congress was focused on the Kansas question.[67]

Like Iowa, California, and Texas, Minnesota attracted population at an amazing rate in the fifties so that it had scarcely been created as a territory before it was time to consider statehood. Congress enacted its enabling measure on February 26, 1857, and offered Minnesota the usual grants. Minnesota Territory had meanwhile been given $40,000 for public buildings and $20,000 for a penitentiary.[68]

Party wrangling got the territory to such a pass that two conventions met simultaneously, one Republican and one Democratic; each drafted its own constitution, which were

Population of Minnesota[a]

1850	6,077
1852	20,000
1855	40,000
1856	100,000
1857	150,092
1860	172,023

[a] The round figures are estimated, the others are census data and the official count of the territory in 1857. Blegen, p. 173.

reconciled and submitted as one by the territorial government for congressional approval. Minnesota avoided the difficulty into which Kansas had fallen when it tried to dictate to Congress the boundaries and the grants of land it should be given. In Minnesota's case speculators working through the delegates attempted to have the boundaries that Congress had specified changed but they were ultimately defeated, perhaps partly because it seemed to some delegates that the surest way to gain entrance into the Union was not to offend congressional susceptibilities. Southern opposition because Minnesota was to be a free state was enough to bear. The constitution of the Republican convention contained a provision respecting the school lands the state was assured of receiving that was retained in the final constitution and was to be of great importance in the future, though it affected Federal-state relations to no degree:[69]

> The proceeds of such lands as are or hereafter may be granted by the United States for the use of schools within each township in this State, shall remain a perpetual school fund to the State, and not more than one-third of said lands may be sold in any two years, one-third in five years, and one-third in ten years; but the lands of the greatest valuation shall be sold first, provided that no portion of said lands shall be sold otherwise than at public sale. The principal of all funds arising from sales or other disposition of lands, or other property, granted . . . shall forever be preserved inviolate and undiminished. . . .

[66] 12 Stat. 127.

[67] Theodore C. Blegen, *Minnesota a History of the State* (Minneapolis, 1963), p. 220.

[68] 9 Stat. 403, 438 and 11 Stat. 167.

[69] *Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota* (St. Paul, 1858), p. 613.

Not only did southern Congressmen dislike Minnesota's anti-slavery convictions but also its generous welcome to aliens arriving in the territory who were permitted to become naturalized citizens. But Congress was weary of territory- and state-making for it had devoted many long hours to the question for years, hours filled with emotion and at times hatred, first on California, then on Kansas, and now on Minnesota. There were other pressing issues such as the tariff, the government deficit, the demand for free lands, the need for a transcontinental railroad, and farmers' demands for the creation of a department of agriculture to be concerned about their problems. By an Act of May 11, 1858, Minnesota was made a state.[70]

Oregon

Oregon with little more than half the requisite population to entitle it to admission and with a growth rate far below that of Kansas and Minnesota found a welcome in Washington that the representatives of the latter two did not enjoy. The reasons for this difference seem clear: although Oregon did not wish to be a slave state, neither did it wish to admit free Negroes, mulattoes, and Chinese. This put it in the same position as most southern states; furthermore, it was Democratic and pro-slavery Democratic at that. It elected as its delegate, and later as its first Senator, Joseph Lane, who has been characterized by Allan Nevins as "an able secessionist orator of North Carolina birth, unscrupulous and imperious" and essential to maintaining Democratic control in the Upper House. Appropriately, it was Alexander H. Stephens of Georgia who made the major speech in behalf of the admission of Oregon on May 19, 1858. Stephens built his argument around four points: the regularity of the proceedings in Oregon in contrast to those in Kansas; the republican form of the constitution (presumably the exclusion of Negroes assured its republican form, for otherwise it was not in essence any different from that of Kansas); the large growth of taxable property; and finally the great increase of population. He declared that the territory's population had increased to 43,772 as shown by a special census of 1855, or a growth of more than 400 percent since 1850 and held that it had since increased "in nearly that ratio," which might bring it to some 160,000. His appeal to the numbers game aroused opponents who knew better; the Census of 1860 showed only 52,465 people in Oregon.

Republican members of Congress had little reason to oppose the admission of Oregon, though they may not have been altogether pleased to see Joseph Lane with his pro-slavery views coming from a territory so far north. They did make much of the fact that the slavery representatives had denied admission to Kansas until it had the required population, which all evidence suggested it already had, while favoring the admission of Oregon which clearly did not have the required numbers.[71]

Congress submitted the same propositions to Oregon that it submitted to Kansas and Minnesota with the same disclaimer clause. Small adjustments were to be made later.[72]

Nevada, Colorado, and Nebraska

In 1863 and 1864, Republican leadership in Congress, troubled by divisions in the ranks of their party and the revived strength of the Democrats, were deeply worried about

[70] 11 Stat. 285; *Cong. Globe*, 35th Cong., 1st sess., Feb. 25, pp. 861 ff.

[71] *Cong. Globe*, 35th Cong., 1st sess., May 19, 1858, p. 2209 ff.; *ibid.*, 35th Cong., 2d sess., Feb. 10, 1859, p. 943 ff.; *House Reports*, 35th Cong., 2d sess. (Serial No. 1018), No. 123, for two minority reports of the Committee on Territories, opposing Oregon's admission until it had the required population. See also Lester Burrell Shippee, "The Federal Relations of Oregon," *Oregon Historical Society Quarterly*, 20 (December 1919), pp. 370 ff.

[72] Act of Feb. 14, 1859, 11 Stat. 383.

the approaching election in 1864. The war was lasting unexpectedly long, losses on the battlefield were terrific, taxes were high, and discontent was widespread. Political wiseacres thought that the election of 1864 might be thrown into the House. To strengthen the administration it was deemed expedient to create two or three new states whose votes might be expected to be for Lincoln. New Mexico had nearly enough population but was close to Texas and probably would vote Democratic. Three other territories were interested in statehood to some extent. Nebraska, with a population of 28,841, Colorado with a population of 34,277, and Nevada with a population of 6,857, all as of 1860, were to be the instruments of Republican planning.[73] All were deficient in population, but time and again territories had been admitted without the necessary number, whether 60,000 or the Federal ratio of the number of people to a Congressman. Here then were three possibilities for the creation of Republican-controlled states to aid the party in Washington and in the Electoral College.

Congress proceeded to adopt three enabling acts on March 21 and April 19, 1864, with little debate. A Democratic proposal that would have kept Nevada out of the Union until it had at least 65,000 people was easily defeated. A proposal, favored by Benjamin Wade of Ohio, that would have exempted from taxes for 3 years all privately owned lands entered with warrants, scrip or as homesteads, had been approved by the Senate Committee on Public Lands but in open discussion was disowned by members of the committee except Wade. Another proposal that would have made the 5 percent of net returns from land sales apply to past as well as future sales was also struck out.[74]

The three measures were nearly identical, except for the sections detailing the boundaries and slight variations in the land consessions promised the territories if they decided to enter the Union at this time. They are shown by the following table.

Land Concession in Enabling Acts of 1864

	Nevada	Colorado	Nebraska
School grants	Sections 16, 36	Sections 16, 36	Sections 16, 36
Public Buildings	12,800 acres	12,800 acres	12,800 acres
Penitentiary	12,280 acres	12,800 acres	32,000 acres
University	None	None	46,080 acres
Salt Springs	None	None	46,080 acres

The 5 percent of the net returns from land sales was to be handled differently. Nebraska was to have the fund for the support of schools, while Nevada and Colorado were to be assigned the fund for "making and improving roads, constructing ditches or canals, to effect a general system of irrigation in the state as the legislature shall direct." For the first time Congress had shown an understanding of the vast difference between the humid Middle West and the semi-arid territories of the Interior Basin and Rocky Mountain area.[75]

[73] J. G. Randall and Richard N. Current, *Lincoln The President. Last Full Measure* (New York, 1955), 236–37.

[74] *Cong. Globe*, 38th Cong., 1st sess., pp. 789, 1558; 13 Stat. 30, 32, 47.

[75] *Cong. Globe*, 38th Cong., 1st sess., p. 789; 13 Stat. 30, 32, 47.

Old Jacob Collamer, Senator from Vermont was then in his 72d year, much of which had been in public service; he was a constant and at times a caustic critic of the West for what he regarded as its grasping efforts to take over ever larger parts of the public lands and to deny the East any benefits from them. Collamer looked unfavorably on the innovation in the Colorado and Nevada measures. He could go along with the use of the 5 percent fund for roads and schools but to allow it to be used for a "general system of irrigation" might open up a program of improvements that would have no end in semi-arid parts of the country. Collamer was well aware how adversely the opening of the Middle West had affected and was at that moment affecting agriculture in his own section. He tried to have the clause providing funds for irrigation deleted but did not sufficiently alarm other members from his section.

The three enabling acts provided that there should be neither slavery nor involuntary servitude in the states, except for punishment for crimes, and that there should be "perfect toleration of religious sentiment." Thus they reflected the changed political situation from the time when the southern Democrats had been almost powerful enough in administrative circles, and at times in Congress, to force slavery upon Kansas.

In Nevada, the discovery of the Comstock Lode in 1859 brought in a flood of miners. Much unpleasantness developed with officials, including judges, sent in from outside, and led to an early demand for statehood and the election of local men. Though Nevada had only been created a territory in 1861, congressional leaders were convinced they needed its vote in 1864 and were hoping that it would early acquire sufficient population to merit statehood. Before Congress adopted an enabling act the first territorial legislature authorized an election in 1863 to determine whether the people wanted statehood and to select delegates to a convention. Public opinion was strongly favorable to statehood but because the constitution drawn up by the convention provided for taxing mines and mine improvements it was voted down.[76]

In 1864, having become disillusioned by the corrupt and incompetent officials under whose rule they suffered, the people of Nevada accepted the welcoming hand Congress and the President held out to it, rushed through the proceedings of a new constitutional convention, telegraphed the finished document to Washington immediately and just managed to get under the wire in time to have their vote counted in the Presidential election of November 1864.[77]

Two years later Congress, in a more generous mood, sanctioned the use of the 500,000-acre internal improvement grant to which Nevada was entitled under the Act of 1841 for educational purposes and donated 46,080 acres for a university and 90,000 acres for a school of mines instead of for a college of agriculture. It also allowed Nevada the unique privilege of having 2 years after surveys were completed in which to select these 636,080 acres without competition from others. The state was privileged to make selections as small as 40 acres, and was thus enabled to eliminate useless land and to secure only the most desirable. State lands were required to be disposed of in lots not exceeding 320 acres to actual settlers and bona fide occupants. They were not required to be sold.[78] Nevada was thus the first state to which Congress seemed to imply that the land granted the state should not be offered at public sale with unlimited right of entry.

In 1868 Nevada was granted additional privileges in the selection of its public lands. It could select alternate even-numbered sections within the primary grant of the Central

[76] Effie Mona Mack, *Nevada. A History of the State from the Earliest Times Through the Civil War* (Glendale, Calif., 1936), pp. 247 ff.

[77] Mack, *Nevada*, pp. 256 ff.

[78] Act of July 4, 1866, 14 Stat. 85.

Pacific Railroad, which were held at $2.50 an acre, by giving up double the amount of scrip for the acres thus selected. Also, the agricultural college lands which in other states except California could only be selected from offered lands could be selected from unoffered lands.[79]

Still another liberalizing act was adopted by Congress in 1880. At that time the surveying of the public lands in the state had not gone far. It was still impossible to locate many school sections in the remote, unsurveyed and unattractive areas. Also, by 1880 the state had succeeded in selling only 61,967 acres of school land of the total of 3,904,746 to which it was entitled. Instead of waiting to gain ownership of the place grants which might not be surveyed for decades, and because some that were already surveyed were worthless, Nevada proposed that it be permitted to exchange all the unsold and unselected land, amounting to about 3,864,000 acres, for 2 million acres of nonmineral lands still in the possession of the United States. In this way it would rid itself of responsibility for much worthless land and could block up areas which might be susceptible of cultivation with the aid of water from artesian wells.

When introduced into the House the proposal aroused the indignant opposition of William A. J. Sparks, later to become famous as Commissioner of the Land Office. Sparks called the exchange privilege Nevada requested, unique, never before granted to any state, and judged that it would mean the state would get every acre of any value whatever for agriculture and would leave the government with nothing but worthless land. It was, he declared, an odious distinction in favor of Nevada. Rollin M. Daggett, Representative from Nevada, denied that the state would select all the choice land; rather its object was to select land that with the aid of the state might be brought to productive farming. The measure easily won the support of Congress and became law on June 16, 1880.[80] Nevada thus gave up the right to some 1,864,000 acres in order to select the remaining 2 million acres of school lands to which it was entitled from the most useful and promising it could find.

Nebraska was not so easily cozened into playing the Republican game as Nevada had been. Party feelings ran high then. From the creation of the territory in 1854 there had been a strong Democratic Party, supported by the patronage and power of the Pierce–Buchanan administrations. The difference between the political situation in Nebraska and that in Kansas that had caused this turmoil was that the Nebraska Democrats had cut themselves loose from the Buchanan policy in time and were not hurt to the same degree as the Kansas leaders had been. In 1860 an election to select delegates to a constitutional convention was carried by the Republicans but the people of Nebraska, tiring of the ultra-partisanship, voted against statehood and the convention was not held.[81] In January 1864, both parties had joined in a memorial asking Congress for an enabling act but feelings had changed by June when delegates were elected to a convention. It proved to be overwhelmingly opposed to statehood. Apparently the fear of the heavy taxes that would accompany statehood was the most telling argument in opposition to to admission. In 1866, the movement for statehood was revived, the party division was closer, and the fact that Nevada with a much smaller population was now a sovereign state, electing its own governing and judicial officers was given emphasis. Reluctantly Nebraska formed a state government after

[79] Act of June 8, 1868, 15 Stat. 67.

[80] *Cong. Record.* 42d Cong., 2d sess., May 20, June 14, 1880, pp. 3598, 3633, 4513; 21 Stat. 287; *Report of the Surveyor General and State Land Register of the State of Nevada, 1889–1890* (Carson City, 1891), p. 111. This report shows that at the end of 1880 the state still had 1,018,258 acres to select.

[81] James C. Olson, *History of Nebraska* (Lincoln, Nebr., 1955), pp. 128–29.

adopting a constitution which was accepted by Congress provided the state would immediately remove the provision restricting the franchise to free white males. This was done and Nebraska was admitted on March 1, 1867, with the same donations Congress had offered in 1864.[82]

A mining population in the early stages of a community's development is notably unstable, uninformed about outside issues, absorbed in its struggle for the precious minerals and disinterested in everything else. However, ambitious politicians appeared everywhere on the American frontier, anxious to gain a following, and the power that went with it. Colorado had grown rapidly and the inevitable issue of statehood was raised early.[83]

Voters of Colorado decisively rejected the first opportunity for statehood, partly because of fear of high taxes but also because of political complications, growing factionalism, and personal rivalries. A swift change of sentiment followed in 1865, a second constitution was framed, a state government was formed, and admission was requested. Colorado votes were no longer needed, however, and Johnson had replaced Lincoln in the White House. The new President stood on the same ground as earlier opponents in giving as a reason for refusal to admit Colorado that it had insufficient population and wealth and had not been authorized to form a government. Thereafter sentiment for admission waned.[84] In 1875, when the territory had a population at least up to the Federal ratio, Congress adopted a second enabling act with favorable changes. The amount of land for public buildings and for a penitentiary was increased from 12,800 acres each to 32,000 acres each, and like Nebraska the state received 46,080 acres of salt springs and 46,080 acres for a state university. The 5 percent fund was to be used for internal improvements. An additional section which was to be inserted in enabling acts for all states subsequently admitted established conditions of sale for the school lands. In Colorado they were not to be sold for less than $2.50 an acre. On August 1, 1876, Colorado was admitted as the "Centennial State" by Proclamation of President Grant.[85]

Omnibus Enabling Act for Four States

Utah Territory, which had 30,273 people in 1860 and 86,786 in 1870, was the only other territory (except New Mexico) having a population large enough for admission in 1864 (it exceeded all three of the territories considered for admission in 1864) but it was to be punished for another generation for its adherence to Mormonism, the economic policies of its predominant church, and the practice of plural marriages.

Political considerations continued to play a major role in the admission policy of Congress in the years after 1876, the more so because of the closeness of party divisions in the Congress. Neither the Republicans nor the Democrats were anxious to admit new states that might provide additional electoral votes for the other party or greater strength in the two Houses. Consequently, five territories, six if we include Utah, were denied votes in Congress and participation in the selection of Presidents in 1884 and 1888.[86]

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[82] Olson, *History of Nebraska*, pp. 129 ff. By an Act of March 30, 1867, the provisions of the Agricultural College Act were extended to Nebraska. 15 Stat. 13.

[83] Carl Ubbelohde, *A Colorado History* (Boulder, Colo., 1965), pp. 135 ff.

[84] Percy S. Fritz, *Colorado. The Centennial State* (New York, 1941), pp. 233–38.

[85] Act of March 3, 1875, 18 Stat. 476. Ubbelohde, *A Colorado History*, pp. 145–49.

[86] Other issues such as the division of Dakota Territory, the repudiation of some county bonds given to a railroad and a brand of extreme factionalism and bitter political strife are discussed in Howard R. Lamar, *Dakota Territory 1861–1889: A Study of Frontier Politics* (New Haven, Conn., 1956), and Herbert S. Schell, *History of South Dakota* (Lincoln, Nebr., 1961), pp. 203 ff., *passim.*; James McClellan Hamilton, *From Wilderness to Statehood.*

SUMMARY OF GRANTS TO IDAHO AND WYOMING IN ADMISSION ACTS

	Idaho	Wyoming
School lands	Sections 16, 36	Sections 16, 36
Public Buildings	32,000 acres	32,000 acres + 75,000
State University	46,080 + 50,000	46,080
Agricultural college	90,000	90,000
School of science	100,000	
Normal schools	100,000	
Insane asylum	50,000	30,000
Penitentiary	50,000	30,000
Penal or educational institutions		30,000
Fish hatchery		5,000
Deaf, dumb & blind asylum		30,000
Poor farm		10,000
Hospital for miners		30,000
Other institutions	150,000	260,000

Finally, in 1889, members of both Houses, tiring of the long-sustained squabbles over admission and recognizing that the rapidly growing population of the territories should be given statehood, agreed upon a measure to provide for the admission of four—North Dakota, South Dakota, Washington, and Montana—which in 1890 contained together 1,039,739 people. At the same time Congress paid no attention to Utah's claim to representation for its 210,779 people and New Mexico's claim for its 160,282 people. New Mexico, interestingly, had been supported for admission in 1874 when the Republicans thought it would be in their camp but in 1889 when the territory seemed to show a stronger affinity for the Democratic Party, the Republicans discovered that New Mexicans were Spanish-speaking, knew little or no English, had few schools and were not ready to participate in American government. Over the anguished opposition of leading Democrats, New Mexico was denied admission, and only the four territories were authorized to hold conventions to frame constitutions and form state governments.[87]

An omnibus enabling act required each of the four states to provide for "perfect toleration of religious sentiment," to honor all debts and obligations of the territorial governments which preceded them, to create a system of public schools open to all children and free from sectarian control, and to adopt the usual disclaimer provision concerning the public lands. In return each state was to have the usual sections—16 and 36—in each township for schools, 32,000 acres for public buildings, 46,080 for a university, 90,000 for an agricultural college (120,000 to South Dakota which had a larger population), and 5 percent of the net proceeds from public land sales for schools. The enabling act specifically repealed the section of the Act of September 4, 1841, so far as it might have applied, granting 500,000 acres to each state for internal improvements, and equally clearly stated that the Swamp Land Act of September 28, 1850, did not apply to the four states. In lieu of internal improvement, swamp and saline lands[88] Congress granted a half million additional acres to each of the four states for public buildings, normal schools, schools of mines, reform schools, the state university, and for miscellaneous purposes. In contrast to the

A History of Montana, 1805–1900 (Portland, Oreg., 1957), 524 ff.; Elwyn B. Robinson, *History of North Dakota* (Lincoln, Nebr., 1966), 197 ff.

[87] *Cong. Record*, 50th Cong., 2d sess., Jan. 15, 16, Feb. 20, 1889, pp. 802, 862, 2103.

[88] Until the admission of Kansas in 1861 every state had been given the swamplands by acts of Congress of 1849, 1850, and 1860.

Colorado enabling act, the omnibus act provided that none of the four states was to sell its lands at less than $10 an acre. They were permitted to lease them in blocks up to 640 acres for terms of 5 years.[89]

Wyoming and Idaho

Instead of following the precedent of the Omnibus Act of 1889, Congress in 1890, adopted two separate measures to provide for the admission of Wyoming and Idaho after they had reversed the process Congress preferred by organizing state governments without waiting for an enabling act. The two measures followed the Act of 1889 closely, however, with changes in the quantity of land granted and the omission of the minimum price of $10 an acre required by the former act in sales of all state land.[90]

Utah

Utah, the 45th state, having satisfied Congress that the Mormons had abandoned plural marriages, obtained an enabling act on July 16, 1894, authorizing the holding of a convention and the forming of a state government. In addition to the requirements exacted of the Omnibus States, polygamous marriages were forever prohibited in it. In return for its disclaimer clause and the fact that it did not receive internal improvement and swampland grants Utah was given, not the 6 and 7 percent of its land that the Omnibus States received, but a full 14 percent. The largest addition was the doubling of the school lands to four sections in each township—2, 16, 32, 36. The most significant of the newer purposes for which grants were given was for "permanent water reserves for irrigation."

GRANTS TO UTAH

School	5,844,196
Public buildings	64,000
University	46,080
	plus 110,000
Agricultural college	200,000
Irrigation purposes	500,000
Insane asylum	100,000
School of mines	100,000
Deaf and dumb institution	100,000
Reform school	100,000
Institution for the blind	100,000
Miners' hospital (Act of Feb. 20, 1929)	50,000
Normal school	100,000

Five percent of the net proceeds from sales was to be allowed the state for common schools. An additional requirement applied to Utah was that no part of the income from the lands thus granted was to be used for sectarian schools.[91]

Oklahoma Enters, Arizona Delays

State-making seemed to be nearing its end in 1905 and 1906 when it was proposed to join Indian Territory and Oklahoma Territory into one state and Arizona and New Mexico Territories into another state. There was marked opposition in all four territories to such compulsory marriages but Congress insisted on the unions. On June 16, 1906, it adopted an enabling act authorizing the creation of two states out of the four territories and forbidding Oklahoma to remove its capital from Guthrie until 1913 or to appropriate money for a capital building during this period.[92] In both new states polygamy and laws to restrict the suffrage on account of race, color, or previous conditions of servitude were forbidden. All state officers of Arizona were required to be able to read, write, and speak English sufficiently well to

[89] Act of Feb. 22, 1889, 25 Stat. 677. As early as 1879 there was a movement in Dakota Territory to have the school lands held for $10 an acre and, as Herbert Schell has shown, Congress accepted the $10 minimum price and required it by the enabling act. Schell, 212, 213, 221, 222.

[90] Acts of July 3 and 10, 1890, 26 Stat. 215, 222.

[91] 28 Stat. 108 and 29 Stat. 876.

[92] 34 Stat., Part 1, pp. 282 ff. In Coyle v. Oklahoma the Supreme Court held that these limitations were in violation of the equal footing on which the state entered the Union and were not binding on it.

conduct the business of their offices without the aid of interpreters.

Arizona was promised sections 13, 16, 33, and 36 for common schools but Oklahoma was treated differently. Sections 16 and 36 were to be for schools, section 13 of Indian lands, when opened, were to be one-third for for the University of Oklahoma and its associated preparatory school, one-third for normal schools, and one-third for a colored A & M school. Section 33 of the Indian lands was assigned to charitable and penal institutions. Both states were to receive $5 million for a school endowment. In the case of Oklahoma this sum was stated to be in lieu of the school sections it was not to have in the Indian Territory. As it worked out Oklahoma received 4.6 percent of its total acreage in place of the 11 percent it would have received had all four sections in each township come to it, whereas, Arizona received its full 11 percent plus the $5 million. Both states were also to have 5 percent of the net proceeds from public lands for schools.

Sections containing minerals were denied to Arizona but if school sections contained minerals the state was privileged to select lieu lands elsewhere. Oklahoma, on the other hand, was placed under no such limitation but it was not permitted to sell its mineral lands before 1915, though it might lease them under carefully prescribed conditions.

The table of additional grants beyond the school sections, the 5 percent clause, and the $5 million shows that in acreage Arizona was the more generously treated. On the other hand the Oklahoma lands were likely to produce revenue much earlier than those of Arizona, partly because of their minerals and because they had greater value as farms.

Oklahoma and Indian Territory reluctantly elected to accept the offer of the enabling act, created a constitution and a government and became the state of Oklahoma on November 16, 1907. Oklahoma acquired a total of 3,095,760 acres from the Federal government.

GRANTS PROPOSED IN 1906[a]

	Oklahoma (acres)	Arizona (acres)
University	250,000	240,000
Preparatory School	150,000	
A & M College	250,000	300,000
Colored A & M College	100,000	
Normal Schools	300,000	200,000
Public Buildings		192,000
Insane Asylum		200,000
Penitentiary		200,000
Deaf, Dumb & Blind Asylum		200,000
Miners' Hospital		100,000
School of Mines		200,000
Military Institutes		200,000
Other Institutions		200,000

[a] Exclusive of the schools section place grants.

Arizona and New Mexico

Neither Arizona nor New Mexico was willing to give up their ambitions to enter as individual states and remained as territories for a longer time. In 1910 Congress was persuaded to try again by allowing each to enter the union as separate states. Although the long enabling act applied to both territories, each had a separate section, nearly identical. Each was given four sections in each township with the privilege of selecting lieu lands in place of the sections in Indian reserves and in place of mineral lands which were denied the state. In lieu of the internal improvement, swamp, saline, and agricultural college grants provided for under earlier legislation, Arizona was given 1,446,000 acres and New Mexico 1,350,000 acres for a state university, capitol buildings, a miners' hospital, normal schools, A & M college, a school of mines, military and other state institutions, and each received 1 million acres to pay for bonds issued by a number of counties, and 5 percent of the net proceeds from public land sales for schools.[93]

[93] Act of June 20, 1910, 36 Stat., Part 1, pp. 557 ff.

New Mexico, as a territory, had previously been given land in 1898: 32,000 acres for buildings, 111,080 for a university, 100,000 for an A & M college, 500,000 for irrigation, 100,000 for dredging the Rio Grande River, 100,000 for normal schools and 400,000 for other state institutions.[94] As a result, the total acreage received by New Mexico was 12,794,659 acres or 16 percent of its area while that of Arizona was 10,543,753, or 14 percent of its area. New Mexico and Arizona both became states in 1912.

Alaska and Hawaii

Many people thought that with all the coterminous territory stretching from the Atlantic to the Pacific now divided into states, state-making for the United States was at an end, but they reckoned without the changes World War II brought about, and the new importance Hawaii and Alaska came to have. The admission of both territories became involved in bitter partisan wrangling not unlike that which had long delayed admission of other territories. Also, some were troubled at the influence of allegedly communist-led unions in Hawaii and the questions over fishing rights and restrictions in Alaska. However, these difficulties were sufficiently resolved by 1959 and 1960 when Hawaii and Alaska entered the Union as the 49th and 50th states. In Hawaii there was no unalienated public domain as that term is used in the United States, whereas in Alaska practically all the land was public domain except for what had been set aside as national forests and other reservations.

Alaska had been given territorial status in 1912 but had never gained the full powers previously accorded territories. This occasioned dissatisfaction and produced a movement for statehood by 1950. Still, Congress was slow to act and in 1956 the territorial legislature provided for the election of members of a constitutional convention that met, drafted a constitution which was submitted to a popular vote and carried. Following the earlier Tennessee experience, the people then elected their state officials and sent two "senators" and a "representative" to Washington. Congress failed to act, perhaps not liking this procedure in 1956 any more than it had on a number of earlier occasions when territories had taken matters into their own hands. Meantime, however, the forces opposed to admission, both in Alaska and in Washington, were waning and in 1958 Congress provided the necessary enabling act with the usual disclaimer provision respecting the public lands.

At the outset of the movement for statehood for Alaska it was proposed by some that all lands not reserved be given to the proposed state. This was so much more generous than the donations given other states that the proposed amount was later reduced in the enabling act to 102,550,000 acres of public lands and 400,000 acres of national forest land. Instead of defining precisely for what purpose various portions of land were granted, Congress left the right of selection to the state. Place grants such as the school sections given all other states would make little sense in Alaska, given the nature of the vast wasteland, any more than they had in Nevada. Alaska's grant, constituting 28 percent of its area, was well below the 38 percent given Louisiana and the 62 percent given Florida. (It should be remembered that at the time the swamplands were given these and other states, it was thought that they would be more of a liability than an asset.) The new state was also promised the usual 5 percent of the net proceeds derived from land sales though since the state was allowed to select the best lands this was little more than a meaningless carryover from previous measures.[95]

[94] Act of June 21, 1898, 30 Stat. 484.

[95] Acts of July 7, 1858 and March 18, 1959, 72 Stat., Part 1, p. 339 and 73 Stat. 5; Ernest Gruening, *The State of Alaska* (New York, 1954), p. 464.

Federal Sovereignty

The enabling acts have proved somewhat difficult to modify because not only is it necessary for Congress to adopt the changes but the states are required through constitutional amendment to accept them also. However, the Federal government has shown flexibility in permitting the states to sell instead of lease their saline lands, to use their internal improvement lands for education, to exchange their sections 16 and 36 for select lands, to sell mineral rights, and to establish schools of mines instead of colleges of agriculture.[96] Also Congress tolerated, if it did not actually sanction, sale of the swamplands without regard to their objective, and the use of the proceeds for public buildings, education, roads and bridges.[97]

From the admission of Ohio in 1803 to that of Alaska in 1959 the territorial- and state-making policy involved Congress and the people of the territories in complicated and lengthy political disputes in which there was being hammered out agreements concerning the management and sharing of the public lands as well as the basis for the fundamental law of each state. In the process the states were brought, with some reluctance, to give up any plans or ideas some of their leaders may have entertained of either acquiring or controlling and managing their public lands as the Original Thirteen and Texas did. They were even obliged to accept limitations on their taxing powers.

The states were never to accept Federal management of the lands and Federal reduction of their power with equanimity and were to devote much time to considering plans for reversing the disclaimer provisions in their enabling acts and the ordinances they were compelled to accept.

States which entered the Union late profited from the experience of the older ones in bargaining with Congress and won double, and in 1896 quadruple, the earlier donations for schools and an elaboration of donations for higher educational institutions. Over 77 million acres were given for common schools and 21 million for universities, technical schools, and other public activities. The galvanizing effect of these grants in stimulating education can hardly be exaggerated. Not to be minimized either is the effect the small sums received by the states over many years from the 3 and 5 percent funds for road construction, levee building, and experiments in irrigation.

In addition to the usual grants for education and public buildings which were gradually liberalized, Congress had shown an inclination to convey to the states certain public lands it could make nothing of either because of their apparent worthlessness or because large capital expenditures were necessary to make them useful. Examples are the donation of the remaining and relatively valueless scattered lands in the Virginia Military Tract to Ohio, the donation to the states of the swamplands for which Congress believed it had no constitutional power to provide drainage, and the promise to several states of up to a million acres of arid lands capable of irrigation.

Similarly, the school, university, and agricultural college grants were given by Congress which could not find justification for using tax money for such purposes. One may say that the use of public lands for purposes which otherwise strict constructionists could not favor had some effect on the political views of many persons. Certainly, western people who came to look to the Federal government for land donations for objectives they strongly desired moved away early from Calhoun's view of the Constitution. The fact that the Congress was supreme in the management of its lands and that "sovereign states" could not assume control over them

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[96] *Annual Report, New Mexico Commissioner of Public Lands, 1965–1966*, pp. 8–9.

[97] Matthias Nordberg Orfield, *Federal Land Grants to the States with Special Reference to Minnesota* (Minneapolis, 1915), p. 119.

nor tax them either before or for a time after they were sold, was a clear indication of where true sovereignty lay, despite the views of some sophists of the time.

CHAPTER XIII

General Grants to States

Thus far we have been dealing with the grants given to states at the time of their admission. They agreed not to interfere with the remaining public lands in Federal ownership in return for grants for schools, universities and public buildings, 5 percent of the net proceeds from the sale of public lands for the construction of roads to and into the new states, and grants of salt springs. These compacts were not to satisfy the new states for long. They soon urged the Federal government to give them additional lands to help finance the building of specified canals and wagon roads and the improvement of waterways. Later they wanted land grants for railroads and for the endowment of agricultural colleges. They demanded also that the swamplands, that is, all the overflowed, wet, swampy or poorly drained land, be turned over to the states to be reclaimed by them and made into cultivable farmlands. Far more land went to the states under the many general and special laws granting land for various purposes than was transferred to them under the provisions of the various enabling acts.

Federal land grants for internal improvements will be treated in the following chapter except for general grants which applied to all public land states entering the Union before a certain time. By an Act of 1841, 500,000-acre grants for internal improvements were given to each state on admission if it had not already received land for canals or roads, until 1889. With the admission of the Omnibus States (the Dakotas, Washington, and Montana) an equivalent acreage was given for other purposes. Similarly, every public land state prior to the admission of Kansas in 1861 was given the "swamp" lands within it under the Acts of 1849, 1850, and 1860. These general grants and the Agricultural College Act of 1862 are the subject of this chapter.

State Improvement Grants

In a successful effort to strengthen political support for the preemption-distribution measure Henry Clay was trying to push through Congress in 1841, a section was added granting 500,000 acres to each of the public land states and to each state admitted thereafter to aid in building "roads, railways, canals, improvements of water-courses, and draining of swamps." States which had previously received grants for canals, roads, or river improvements were to have these deducted from their allotment.[1] The western states were always glad to receive such grants but rarely if ever was their appetite satiated and they soon came back for more. Before the record was complete 14 states had managed without too much trouble or opposition to add to their half-million-acre grant by numerous special measures.[2] Three states—Colorado, Nebraska, and Nevada—were given no additional land for railroads or canals but as is seen in the following chapter were generously provided for in direct grants to railroad companies.

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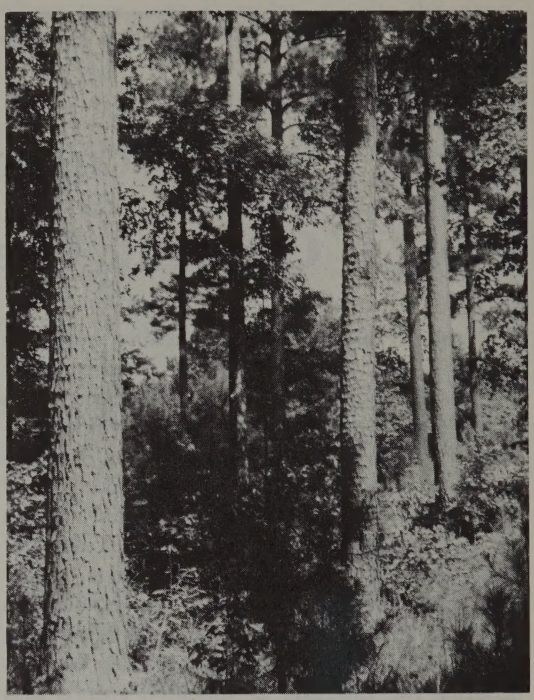
[1] 5 Stat 453.

[2] *Public Land Statistics, 1966*, pp. 7–8.

Since 1803 Congress had accompanied its grants to states with the injunction that the land should not be sold for less than the government charged for its land. This restriction was applied to the internal improvement grants but no restriction was put on the size of tracts the states could sell or the total amount individuals could acquire. The grant was expected to be disposed of quickly to make available funds with which the states could press forward the many enterprises they had either undertaken or planned in the boom years before 1837.

The fixed size of the state improvement grants prevented any long drawn out disputes about the quantity of lands, such as arose from the Swamp Land Acts with their indefinite characterization of "swamp" lands, though there were to be controversies between railroads and states over selections. The states were permitted to make selections from surveyed and unappropriated land on which there were no other claims. Selecting agents could not precede the surveyor—as settlers could in some states by 1853 and 1854. Settlers on public lands who had not yet preempted their land were encouraged in Indiana and Iowa to allow the states to select their claims since the lands would then be sold to them on credit, and by agreement at the government price of $1.25 an acre. Where there was anxiety for early title the selecting agents could promise that the state would obtain its Federal patent and give state title to individuals faster than the Federal government could prepare and transmit patents to individuals.

Congress prescribed no specific conditions to make certain that the 500,000-acres grants would be used for internal improvements and states were careless if not willfully negligent in carrying out the measure. Iowa directed that the grant should be diverted to educational purposes. To make sure that no later legislature would change the appropriation of these lands the people of Iowa wrote into their constitution that the proceeds should be "a perpetual fund, the interest of which, together with all the rents of the unsold lands . . . shall be inviolably appropriated to the support of common schools . . . ." One writer maintains that in accepting the constitution of Iowa, Congress in effect gave consent to the diversion.[3]



Shortleaf pine lands in Arkansas. Many acres passed into private ownership as "swamplands."
U.S. Forest Service

Kansas also endeavored, in the Wyandotte constitution, to provide that the 500,000 acres of internal improvement land should be used for education but state officers thought better of the matter in 1866 and appropriated the income from their sales to four railroads. The railroads were assigned the returns from 12,500 acres for each mile of line, or practically double the per mile grant given to the Santa Fe Railroad for its line across the state.

[3] Roscoe L. Lokken, *Iowa Public Land Disposal* (Iowa City, 1942), pp. 158–66; Matthias Nordberg Orfield, *Federal Land Grants to the States with Special Reference to Minnesota* (Minneapolis, 1915), p. 102.

Furthermore, the lands were mostly in the eastern third of the state, whereas the Santa Fe lands were in the central and western third and were less desirable. The agent in charge of the sales was lax in permitting large tracts to go for low prices; consequently the four railroads moved in and bought the balance to enable them to get the rising price which construction might bring to them. One historian of Kansas land policies has characterized the state administration of the internal improvement land as "irresponsible and inefficient" and that in diverting a balance of $8,000 and 4,600 acres to the school fund Kansas acted "in violation of the mandate of congress."[4] Alabama, Nevada, Oregon, and Wisconsin were not deterred by any qualms from appropriating the income from their grants for education.

Nebraska conveyed its internal improvement lands to nine short line railroads ranging from 6 to 50 miles in length, allowing 2,000 acres for each mile. Also two counties were each given 1,000 acres for the construction of bridges.[5]

It may have been the tendency of the states to divert income from internal improvement grants to education that led Congress in 1889 in the Omnibus Act for the admission of North and South Dakota, Montana, and Washington to provide that, in lieu of the usual grant for internal improvements, an equivalent amount of land was to be given for specifically mentioned institutions and the 500,000-acre provision of the Act of 1841 was repealed. This same Omnibus Act also declared that the grants for institutions were given in lieu of any claim the states may have had for any swamp and saline lands within their boundaries.[6]

[4] Thomas LeDuc, "State Administration of the Land Grant to Kansas for Internal Improvements," *Kansas Historical Quarterly*, XX (November 1953), 545–52; Daniel W. Wilder, *The Annals of Kansas* (Topeka, 1875), p. 436; Gates, *Fifty Million Acres* (Ithaca, N.Y., 1954), 252n.

[5] Addison E. Sheldon, *Land System and Land Policies in Nebraska* (Lincoln, Nebr., 1936), p. 213.

[6] Act of Feb. 22, 1889, 25 Stat. 681.

Swamp Land Acts

Next on the list of general acts granting lands to the states are the Swamp Land Acts of 1849, 1850, and 1860. For years there had been desultory discussion of the great quantities of swamp, overflowed, relatively inaccessible, and seemingly unwanted lands in Louisiana, Arkansas, Illinois, and Wisconsin. If Congress could grant land for the building of canals, roads, river improvement, and railroads could it not give swamplands to the states for their drainage?

Louisiana, with nearly a third of its land swampy and unsuited for cultivation, was the first state to be given these waste, unhealthful, and unwanted lands. Louisiana did not demand them as a right, in the way some states had demanded the cession of all the remaining public lands within their borders, nor did the opposition in Congress question the constitutionality of such a grant. Congress had no plan to build levees or in any way to improve the land and there was little or no feeling among the members that it should do anything to make these lands suitable for settlement. It was quite willing to donate the lands to Louisiana for there appeared no prospect that they would bring in any revenue to the United States. Representative John H. Harmanson of Louisiana, in explaining the purpose of the act, declared somewhat optimistically that the state and its citizens had constructed levees to shut out the flood waters of the Mississippi and its tributaries for a distance of 1,400 miles at a cost of $20 million. Several million acres had already been reclaimed and he estimated there were 5 million additional acres that might be made usable if the land were given to the state. Questioning of the proposal centered almost entirely on the phraseology of the measure, which some critics thought altogether too broad, too easily interpreted to include most of the unsold land in government hands. It passed the House on February 24, 1849, and the Senate 2 days later.[7]

[7] *Cong. Globe*, 30th Cong., 2d sess., pp. 592, 594.

The purpose of the Act of March 2, 1849, was "to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein," and to achieve that objective "the whole of those swamp and overflowed lands which may be or are found unfit for cultivation," were granted to the state. Subdivisions in which the greater part of the land was swamp or overflowed were to be included in the donation.

Levee construction had begun unsystematically in French Louisiana in the 18th century with each planter on the rivers or bayous starting his levees after he had suffered from the spring overflows. Levees no more than 5 feet high were constructed close to the river, and without any of the careful engineering planning that came much later. Community action to defend and strengthen the levees when danger appeared was rare, and indeed there was considerable opposition at all times, since levee building seemed to divert floodwaters onto those lands not protected. Slowly, through cooperation and group action and with the aid of local parish authorities and then of the state government, progress was made, but the work was on too small a scale to protect plantations in unusually high floods. A wide variety of state laws were passed, sizable appropriations were made, and some planning was done by the states of the lower Mississippi before 1848, yet unusually high floods continued to inflict great damage. These states needed help; how better could it be provided than by the Federal government giving them the lands that would be benefited by larger levees?[8]

In 1850 John Wilson, a career man in the General Land Office, was sent to Louisiana to make a reconnaissance of the lands along the streams for the purpose of recommending steps to secure speedy selection of the swamplands, thus enabling Louisiana to undertake levee improvement as soon as possible.[9] Wilson arrived in the state at the height of one of its great floods, which had breached the inadequate levees in many spots, covered whole plantations and villages, and inflicted enormous and widespread damage.

After talks with the Federal surveyor general and other influential people in Louisiana,

[8] Robert W. Harrison, "Levee Building in Mississippi before the Civil War," *Journal of Mississippi History*, XII (April 1950), 63 ff.; *id.*, *Alluvial Empire, A Study of State and Local Efforts Toward Land Development in the Alluvial Valley of the Lower Mississippi River* (Little Rock, Ark., 1961), I, 50 ff.

[9] The careers of the brothers John and Joseph Wilson in the General Land Office are worthy of attention for their success in avoiding the frequent removals the patronage system seemed to make necessary, the informative reports they prepared as Commissioners and the high-mindedness of their service. Both listed themselves as born in the District. Joseph S. Wilson first appeared as messenger in the Office in 1827 with a salary of $700, which became $1,150 in 1833. In 1837 he was principal clerk at $1,800. In 1855 with John as Commissioner his salary was raised to $2,000. In 1859 he was Acting Commissioner, salary $3,000, but 2 years later was back as chief clerk at $2,000, which he remained until 1867 when he became Commissioner, again at $3,000. This he held until 1871. Although Joseph S. Wilson first appeared on the GLO staff in 1827, a Joseph Wilson who gave his birthplace as Ireland, held the same position from 1819 through 1825 and was replaced by Joseph S. Wilson.

John Wilson first appeared on the list of employees of the Land Office in 1843 as principal clerk drawing $1,800. He gradually worked up to the third position in the hierarchy and in 1853 became Commissioner at $3,000. In every responsibility he filled and left records he seemed to be one who could make decisions, was reliable, forward-looking, and had a grasp of subjects in his charge which made him stand out in officialdom, though he may not always have been tactful in presenting his ideas to his superiors. For the positions held by the two brothers see the *Federal Registers*, 1819–71.

For John Wilson's efforts to protect the public timbered lands from depredations and his dismissal for political reasons see Chap. XIX, "Early Efforts to Protect the Public Timberlands." Wilson then became Land Commissioner of the Illinois Central Railroad and later held the same position for the Transit Railroad which became the Winona and St. Peter Railroad of Minnesota. John B. Rae says that Wilson was lobbying before the General Land Office for a Michigan railroad in 1857. Rae, "The Development of Railway Land Subsidy Policy in the United States" (Ph.D. dissertation, Brown University, 1936), pp. 47, 49.

Wilson came forth with some significant, even startling proposals. He found the levees—generally 5 feet high, 30 feet wide at the base and 7½ feet at the top—to be wholly inadequate because they were not uniform nor continuous and were totally lacking along minor streams flowing into the Mississippi. The levees that had been thrown up were not adequately impacted; as a result numerous crevasses had been created by high water. Wilson suggested straightening the channel, beginning at the mouth of the Mississippi and working upstream. This would cause the river to deepen its channel, speed up the flow and prevent abrasion of the banks. He proposed to start new levee construction farther back from the river, raise the levees to a higher elevation and make the top wide enough to serve as a road, which would make for more solidity and at the same time assure that weaknesses would be discovered early. He maintained that the natural outlets of the river which had been closed should be reopened to permit the water to proceed through the bayous to the Gulf and to serve as a safety valve, lowering the quantity of flow in the river and the pressure on the levees. Wilson pointed out that the cost would be heavy, the income from the swamplands would be inadequate, and Louisiana would have to raise additional taxes to finance the improvements. As a further help to the stricken state he recommended that the swampland grant to Louisiana be expanded to include all the remaining public lands in the state.[10] Wilson's statement offered more reason for supporting the donation of the swamplands, at least on the lower Mississippi, than anything said in Congress.

It did not make sense, however, to help Louisiana build levees unless Mississippi on the other side of the river were given similar aid. Furthermore, Arkansas also needed aid to drain its swamplands and shut out the floodwaters of its rivers. Other states, all the way to the Canadian line, had alluvial lands that seemed to be useless unless they could be drained. Back from the streams, in the level prairies in Illinois, in large wooded areas of Indiana and Michigan, and elsewhere were many wet tracts seemingly not capable of being utilized except as pastures. In Florida more than half the state was regarded as unsuitable for farming land, but only partly because the land was wet. Interests from all these states joined in a move to have the Congress give the swamplands to the states. For Louisiana, Mississippi, and perhaps Arkansas the grant was planned to aid in the construction of levees; farther north in the Mississippi Valley, in Florida, and in California it was drainage that was needed and that could be accomplished, according to the best knowledge of the time, by ditching. These states, however, had no plans in contemplation for utilizing their grants for this purpose.

Before the general Swamp Land Act of 1850 was adopted, discussion again centered on the criteria for selection of "swamp and overflowed lands unfit for cultivation." Advocates of the measure tried to assure opponents that descriptions on the surveyors' plats would be the basis of selection and that it was not intended simply to transfer the lands to state ownership but to make it possible for the states to finance drainage and development of the lands. Critics might well have been skeptical of the states' ability to undertake such massive improvement schemes considering that they had only just carried to completion the canals they had begun in the thirties and had not succeeded in completing the railroads they had undertaken. But Congress seemed only too glad to dump the swamplands on the states, thereby ridding itself of any further obligation for them.[11] In view of the fact that the early maximum estimate of swampland to be selected was 20

[10] *S. Ex. Doc.*, 31st Cong., 1st sess., Vol. 14, No. 68 (Serial No. 562), pp. 2–8.

[11] *H. Ex. Doc.*, 52d Cong., 1st sess., 1891, Vol. 14, No. 1, Part 5 (Serial No. 2933), p. 59.

million acres, whereas over 80 million acres actually were selected (though not all were allowed), one can see that the possibilities of the swampland donation were not fully recognized in 1850. On September 23, 1850, a measure to enable Arkansas and other states to reclaim the swamp and overflowed lands therein was adopted, granting to the states "the whole of those swamp and overflowed lands, made unfit thereby for cultivation. . . ." The proceeds of the lands, "whether from sale or by direct appropriation in kind," were to be applied "exclusively, as far as necessary, to the purpose of reclaiming said lands by means of levees and drains. . . ."[12]

Justin Butterfield, who had beaten out Abraham Lincoln for the post of Commissioner of the General Land Office in 1849, was unimaginative, inefficient, and anything but an alert officer. He made no further political progress. His weakness shows up in his failure to prescribe a system of selection for the swamp and overflowed lands, based on clear evidence of their unsuitability for cultivation as nature had left them.[13] Butterfield's failure to segregate the swamp and overflowed lands as quickly as possible and to halt all entries on them and his decision to leave selection to state selection agents, were responsible for a great deal of litigation. Nearly 200 swampland cases reached the Supreme Court by 1888 and many more were carried to district and circuit courts. State officials could either use the plats and field notes of the government surveyors or they could make their own surveys and provide proof that their selections conformed to the provisions of the act. Much of the litigation and enormous expense to which the states were subjected in defending their selections against private parties and the Federal government and the greatly increased burden on the officials of the General Land Office could have been avoided had Congress been more careful in writing the law and had Butterfield taken prompt action to segregate the swamp and overflowed lands.[14]

John Wilson, who replaced Butterfield in 1852, brought new and vigorous leadership to the General Land Office at a time when it was badly needed. As a result of complications over the selection of the swamplands, the many instances of fraud discovered in the assignments of military bounty land warrants, the problem of withdrawing public lands along routes being considered for railroad land grants, and with the great increase of land entries, a tremendous volume of business was threatening to overwhelm the staff. Among other suggestions made by Wilson in his first annual report in 1852 was a revival of a proposal he had made in 1850 that all the remaining unsold lands in Louisiana be given that state to enable it to build a series of modern, systematically planned and constructed levees that would effectively shut out the floodwaters of the Mississippi.[15] No action on his recommendation was taken but Wilson's views as to swamplands in Louisiana were to prevail in a large measure, for a third

[12] 9 Stat. 519.

[13] Albert J. Beveridge, *Abraham Lincoln, 1809–1858* (2 vols., Boston, 1928), I, 487–92. It is interesting to speculate what progress Abraham Lincoln might have made toward political immortality had he beaten Justin Butterfield in the competition for the Commissionership of the General Land Office in 1849. Lincoln had been unsuccessful in his bid for re-election to Congress, was for the moment footloose and was anxious for the Commissionership which carried with it numerous patronage appointments, lucrative surveying contracts, and the opportunity to acquire familiarity with the intricate details of land office management, all of which could be very profitable to him when the inevitable political turnover came. Lincoln was unsuccessful in his quest for the office though as Beveridge brings out, he pulled every possible wire in his campaign.

[14] For the criticism of Butterfield's neglect and failure see *U.S. Supreme Court Reports*, 76:97–100; *Senate Reports*, 42d Cong., 2d sess., 1878, Vol. II, No. 502 (Serial No. 1790), pp. 1–3; and the later reports of the Commissioner of the General Land Office.

[15] *H. Ex. Doc.*, 32d Cong., 2d sess. (Serial No. 673), Vol. I, No. 1, Part 1, p. 79. Wilson thought there might be 10 million acres remaining after the selection of the swampland but he could not foresee how far this measure was to be stretched. Under the Swamp Land Act 9,504,245 acres fell to Louisiana.

SWAMPLANDS[a]

	1 Area reported in 1849	2 Area selected to 1860	3 Area patented to 1966
Ohio	303,329	54,438	26,372
Indiana	981,682	1,354,732	1,259,271
Illinois	1,833,412	3,259,852	1,460,164
Missouri	1,517,827	4,409,492	3,432,521
Alabama	436,450	2,595	441,666
Mississippi	2,239,987	3,070,645	3,348,013
Louisiana	2,266,987	11,310,103	9,584,412
Michigan	4,544,189	7,273,724	5,680,312
Arkansas	4,807,673	8,652,112	7,686,575
Wisconsin	1,259,269	3,449,238	3,361,283
Iowa	33,813	2,579,976	1,196,392
Florida	562,170	11,790,637	20,326,708
California	----------	----------	2,193,965
Minnesota	----------	----------	4,706,591
Oregon	----------	----------	286,108
Total	20,785,336	57,127,544	64,910,353

[a] California, Minnesota, and Oregon were not included in the estimate of 1849. Probably not much more than half of Florida was surveyed at that time. Column 1 is from *Senate Reports*, 31st Cong., 1st sess., No. 19 (Serial No. 565); column 2 is from *S. Doc.*, 36th Cong., 2d sess., Vol. 1, No. 1 (Serial No. 1078), p. 84; and column 3 is from *Public Land Statistics, 1966*, pp. 7–8. Alabama, Mississippi, and Florida were slow in making selections and California, Oregon, and Minnesota are not even listed as having made any selections by 1860.

of the land eventually passed to the state under the Act of 1849.

Three states—Michigan, Minnesota, and Wisconsin—elected to use surveyors' field notes in making their selections and as a result were to have much less controversy with Federal officials. Yet their swampland selections were not small as seen in the table below. The other states entitled to receive swamplands, except California, elected to make their selections on the basis of their own surveys and as late as 1888 had not been able to get their claims finally adjusted. California, because of the difference in the terms of its grant, was able to combine both procedures for making its selections.[16]

[16] The Act of July 23, 1866, sanctioned the previous selection of swamplands in California before the tracts had been surveyed, accepted surveys by the State of California or those made under its laws, the sale of such lands by the state and confirmed all such actions and authorized the delivery of patents to the state, 14 Stat. 209. No matter what the basis of selection all such tracts were thus made legal.

The slowness with which the swampland business was conducted is shown by the fact that 5 years after enactment less than 10 percent of the ultimate total had been patented; in 10 years only 48 percent had reached the patent state. The delay in completing selections, gaining approval and patents was much more marked in those states which were using their own surveys. Five of these states finally gave up this practice and used the Federal field notes in the hope of concluding the long drawn out process.[17]

Opponents of the Swamp Land Act had warned that the vague and indefinite term "swamp and overflowed lands unfit for cultivation" would make the act difficult to administer. Their forebodings proved more than correct. Almost from the outset the Commissioner of the Land Office and the

[17] *House Reports*, 50th Cong., 1st sess. Vol. 2, No. 347 (Serial No. 2599), Feb. 8, 1888, pp. 2–5.

surveyors general who were charged with supervising the selections complained about the extreme difficulties involved in determining whether land was swamp or overflowed on the basis of the surveyors' notes, which proved to be defective, far from complete, and in many instances fraudulent.[18] The surveyor general for Florida pointed out that field notes only showed what lands were under water at the time the surveys were made. Consequently, surveys which had been made in the dry season would show little land as swampy, whereas other tracts that were surveyed in the wet season would show a high proportion as wet or overflowed. In Illinois, it was brought out, the spirit of speculation had stimulated the state agent "to select every tract which could be supposed to be subject to the law" and large quantities had been erroneously selected.[19] Similarly, Arkansas fell to wrangling with the land officers over the selection of its swamplands. The state's officials claimed that the field notes were quite inadequate as a basis of selection because the surveys had been made in the dryest season or when the ground was frozen.[20]

Butterfield had complicated the task of selecting swamplands by a series of "unskillful instructions" which gave the impression that if the greater part of any legal subdivision was swamp the whole section, even the whole township, could be selected by the state instead of a mere 40 or 160 acres. His instructions of November 21, 1850, stated that where the field notes of survey indicated land to be swampy that was to be the deciding factor but where the field notes gave no such indication the word of "credible and disinterested witnesses" would suffice. There was thus added a heavy burden to that already carried by the local land officers. They were increasingly obliged to act as a court in passing upon the credibility of applicants and witnesses without having any opportunity to examine the land themselves or to have an official examine it. The instructions of Butterfield created a "myriad of conflicts" between those who entered or filed entries upon tracts of public land and the purchasers of the state title to swamplands.[21] Vacillations from a hard line to a soft line in the instructions did not help matters. Instead they made for uncertainty and confusion.[22]

It soon appeared that the states were being more than liberal in their selection of lands as swamp or overflowed; indeed they were including lands that by no stretch of the imagination could be so regarded. Settlers were swarming to lands on the borderline between swamp and not swamp and the failure of Butterfield to segregate all such tracts was the occasion for deep regret at a later time. Squatters were already on some land the states were selecting and others were later to take up lands they assumed to be open to preemption but which were in process of being designated as swamp. Furthermore, railroads with land grants found themselves in conflict with the states which were selecting tracts already con-

[18] *GLO Annual Report, 1851*, pp. 18, 52–53, 163, 166.

[19] John Loughborough, surveyor general for Illinois and Missouri, Oct. 28, 1853, to John Wilson, Commissioner, *S. Doc.*, 33d Cong., 1st sess., No. 1, Part 1 (Serial No. 690), pp. 145–46.

[20] It may be useful here to summarize the very optimistic statement of the surveyor general of Arkansas concerning the progress the state had made in building levees and draining its swampland by October 1853. George Milbourne reported that the grant had accomplished much good. The greater part of the Mississippi had been leveed and considerable portions of both banks of the Arkansas. One contract for the building of a levee 42 miles long had been let. On the Red River cutoffs being planned would shorten the river by 92 miles. Levees on the Mississippi and Arkansas were reported from 5 to 10 feet high. Levees 10 feet high would have a base of 70 feet and be 10 feet wide at the top. Contracts to ditch and drain the land back of the levees were being let. *S. Doc.*, 33d Cong., 1st sess. (Serial No. 690), Vol. 1, pp. 159–60.

[21] *Ibid.*, pp. 145–46.

[22] *H. Ex. Doc.*, 33d Cong., 2d sess., Vol. I, Part 1 (Serial No. 777), p. 138; *S. Ex. Doc.*, 34th Cong., 1st sess., Vol. 14, No. 86 (Serial No. 823).

sidered by the railroad officials as part of their grants. Thus in the fifties the Hannibal and St. Joseph Railroad was contesting selections of swamplands that the state of Missouri was trying to have approved. A little later the Burlington and Missouri was in the midst of a long drawn out legal battle with state officials in Iowa over the selection of land in the vicinity of Glenwood, and the Cairo and Fulton Railroad in Arkansas was contesting state selections near its line. In 1855 the surveyor general for Wisconsin reported that "it seemed almost impossible to bring this business [swampland selection] to a satisfactory conclusion." The Wisconsin selections were daily being called into question by people anxious to enter them as public lands. By 1856 the area of contested swampland selections was 1,168,451 acres,[23] much the larger proportion being in Illinois and Iowa.

Since states, and in some instances counties, were making the original selections and the process involved some expenses not easily provided for, some states allowed individuals to make the selections and compensated them with a share of the land they chose and for which they secured the patents. After Louisiana had selected and gained patents to the lands most easily proved to be swamplands it made a contract with John McEnery whereby he was to receive one-half of any additional land he persuaded the officials in Washington to convey to the state as swampland. Between 1884 and 1892 he received from the state as a result of his efforts deeds to 107,712 acres.[24] It was by making such agreements as this that the states were able to obtain the services of some of the sharpest land lawyers whose compensation was far higher than were the salaries of the lawyers in the Justice and Interior Departments. These men managed to secure for their states approval of large acreages that, with abler protection at headquarters, might have been reduced.

From California came reports that the state's agents were selecting land not shown by the plats to be swamp or overflowed, and that it was permitting persons to take up land upon which settlers were already located and waiting to file their declaratory statements for preemptions. Even more damaging was the report that the state selecting agents were interested in gaining ownership for themselves of the land they were selecting.[25] Like most of the states, California followed the practice of allowing the selection agents a certain proportion of the land for which they secured patents. The agents operating for the state and a clique of San Francisco capitalists engrossed such a large proportion of the swamplands of the state that a Joint Committee of the Legislature was appointed to inquire into the concentration of ownership these interests had established in the San Joaquin and Sacramento Valleys. The list of large holdings compiled by the committee shows how effectively this group had worked in acquiring great blocks of land that later, when irrigated, were to become very valuable. Many of the entrymen were acting for Miller & Lux whose total of swampland came to 80,350 acres and James B. Haggin and Lloyd Tevis whose patented lands were 34,000 acres. Part of the Miller & Lux and all of the Haggin and Tevis patented land ended up in the possession of the Kern County Land Company.[26]

In Mississippi, cypress land in the Yazoo Delta and longleaf pine land, some of it on

[23] *S. Doc.*, 34th Cong., 1st and 2d sess., Vol. I, No. 1 (Serial No. 810), p. 200. For an intelligent effort to explain his decisions and recommendations respecting contested claims see the statement of John Loughborough, surveyor general for Illinois and Missouri in *ibid.*, p. 212. Also *H. Ex. Doc.*, 35th Cong., 2d sess., Vol. II, No. 2 (Serial No. 997), p. 202.

[24] Compiled from the entry volumes of swamplands in the State Land Office, Baton Rouge.

[25] *S. Doc.*, 35th Cong., 1st sess., Vol. I, No. 11 (Serial No. 919), p. 226.

[26] *Report of the Joint Committee to Inquire into and Report upon the Condition of the Public and State Lands Lying Within the Limits of the State of California, 1872.* Data respecting patents for swamplands is from the patent books in the State Land Office, Sacramento.

the hills which were "neither flooded by overflow nor poorly drained," were obtained as part of the 3,348,013 of swampland that the state secured. This quantity was 11 percent of its entire area. The state paid its agents $10 for each section they selected. The story is told that one such agent judged as swampland all tracts over which a boat could pass. He drove a work animal "hitched to a canoe across thousands of acres" of pinelands at fairly high elevations, listed his selections and, though contested by the Federal government, they were finally patented to the state. Some of the cypress land being accessible by water had undoubtedly been stripped of its trees before the grant was made. Before 1860 timberland was selling for as low as 5 cents an acre—one writer has said that the less accessible of the pineland would not bring a cent an acre as late as 1876—though the better located tracts might bring from 25 to 50 cents an acre. It was thus possible for a purchaser to acquire a full section of virgin timber for as little as $32. Though efforts were made to limit the amount of swampland individuals could purchase, like all such efforts by the Federal government, they did not succeed.[27]

Iowa's selections of swamplands were the most controversial and made the most difficulty for officials of the General Land Office. The state agents went about the task very slowly, and had made so little progress by 1858 that a Federal officer estimated that it would take them 8 years more to complete their task at the rate they were going. After selection, the state turned the lands over to the counties for their management and disposal; some counties, not satisfied with the original selections, identified other tracts as swamplands and sent lists of them in for approval. This necessitated the land officers working over plats and field notes again, although they had previously been scrutinized carefully. Even if they found no justification for the selections, they still had to approve them because among the many instructions sent to local officers from Washington was a statement that "the affidavits of county surveyors and other respectable persons" were to govern the selections, no matter how widely they differed from the original field notes.[28]

In their anxiety to select as much land for their states as possible the agents went far beyond the intent of the law and the instructions of the Land Commissioner in segregating tracts as swampland. One list of selections containing 1,052,389 acres in Missouri was found to contain only 64,220 acres that could be justified even by a liberal interpretation of the information in the plats and field notes; the remaining 988,169 acres were reported as dry and arable.[29] The surveyor general for Arkansas, who was charged with scrutinizing the selections of that state, declared that one list of swampland selections was "situated amongst and embracing portions of the Ozark Mountains" and that the field notes had shown them to be "too mountainous and hilly for cultivation."[30]

The following table indicates the extreme slowness with which the segregation of swamplands from public lands proceeded. It is therefore not at all surprising that, among the hundreds of thousands of people rushing westward to find land on which to settle and gain a right of preemption, many squatted upon lands that were later claimed to be swamp, particularly if it is recalled that numerous selections were only wet in the spring season. Squatters and, indeed, investors in wild land preempted or made cash entries on

[27] John Hebron Moore, *Andrew Brown and Cypress Lumbering in the Old Southwest* (1967), pp. 60 ff., offers information concerning logging on the swamplands of the Yazoo Delta when the lands were in little demand and went for low prices. Also see Nollie Hickman, *Mississippi Harvest. Lumbering in the Long Leaf Pine Belt, 1840–1915* (University, Miss., 1962), pp. 68 ff.

[28] *H. Ex. Doc.*, 35th Cong., 2d sess., Vol. II, No. 2 (Serial No. 997), p. 169.

[29] *S. Ex. Doc.*, 35th Cong., 1st sess., Vol. I, No. 2 (Serial No. 1023), pp. 236–37.

[30] Lokken, *Iowa Public Land Disposal*, p. 191.

ACREAGE OF SWAMPLAND SELECTED, APPROVED, AND PATENTED

Year	Selected Annually	Cumulative Total Selected	Approved Annually	Cumulative Total Approved	Patented Annually	Total Patented
1851						
1852	5,219,188					
1853	16,684,253					
1854	11,083,813					
1855	7,064,092	47,849,799	7,470,746	33,685,425	2,238,976	6,488,176
1856	6,024,185	52,288,918	6,036,874	38,344,471	5,729,776	17,880,909
1857	2,962,408	54,174,281	1,141,090	40,133,564	11,186,147	24,060,396
1858	1,395,587	55,129,492	1,290,831	40,923,181	2,410,314	28,716,834
1859	1,110,261	56,634,105	1,530,966	42,381,274	3,722,430	30,375,779
1860	952,959	57,187,550	1,674,708	44,237,971	1,655,697	31,461,220
1861	512,578	57,895,577	599,125	44,481,004	1,082,512	32,134,825
1862		57,895,577	24,116	44,498,351	390,434	32,779,223
1863	28,160	57,923,737	30,724	44,528,835	573,638	33,097,537
1864	753,160	58,648,737		44,528,835		41,289,843
1865		56,648,837	571,429	45,422,327	883,894	42,173,837
1866	480	58,649,517	1,082,308	46,206,731	1,886,961	43,204,775
1867	1,597,794	60,246,532	1,030,020	47,377,523	328,997	43,585,272
1868	47,174	60,293,388	145,628	47,426,851	1,074,263	44,374,463
1869	24,198	60,317,586	451,295	47,990,153	73,186	44,977,148
1870	142,281	60,856,847	474,598	48,364,935	657,733	45,412,932
1871	566,475	61,071,356	428,597	48,935,581	1,168,837	46,276,912
1872	1,401,910	62,428,412	714,255	49,499,363	264,318	46,749,891
1873	276,675	62,576,792	238,826	49,737,578	432,079	46,995,798
1874	334,468	62,906,984	202,187	49,952,994	165,337	47,378,727
1875	1,099,023	64,320,196	47,721	49,997,997	466,384	47,602,458
1876	2,867,777	66,873,785	1,008,005	51,005,805	100,880	47,802,271
1877	737,151	67,683,045	320,935	51,315,355	414,418	47,923,306
1878	905,697	68,533,755	177,637	51,502,403	208,259	48,119,956
1879	478,462	68,995,097	44,712	51,532,623	75,388	48,194,307
1880	211,424	69,206,522	3,295,727	54,828,350	3,757,888	51,952,196
1881	152,214	69,358,737	569,001	55,397,351	932,905	52,885,101
1882	648,032	70,006,769	371,820	55,769,172	992,055	53,877,356
1883	949,188	70,455,957	686,295	56,455,467	392,879	54,167,637
1884	1,482,182	71,938,140	1,388,790	57,794,258	1,271,247	55,438,285
1885	2,608,709	74,546,849	826,728	58,620,986	912,640	56,350,925
1886	1,201,535	75,748,385	171,978	58,792,965	341,594	56,692,520
1887	1,658,887	77,407,273	27,402	58,820,368	51,215	56,743,735
1888	781,857	78,189,130	39,007	58,859,375	96,515	56,840,251
1889	2,010,072	80,190,202	114,096	58,973,472	259,721	57,099,972
1890	19,216	80,218,419	126,990	59,100,462	109,351	57,209,321
1891	23,167	80,241,586	272,404	59,372,866	408,127	57,617,451
1892	29,959	80,271,541	147,446	59,520,313	176,091	57,168,362
1893	118,785	80,390,326	282,646	59,802,960	249,854	57,418,216
1894	65,827		43,820		123,122	58,234,503
1895	135,150	80,591,304	299,033	60,145,813	244,214	57,785,553
1896	65,191	80,656,496				
1897	69,983	80,726,479				58,865,533
1898	109,986	80,836,466		64,840,714		58,944,492
1899						
1900						
1901	138,344	80,049,021		64,498,757		59,408,209
1905		81,803,827		65,406,231		63,231,416

some lands later to be selected as swamp or overflowed land and thought their investments secure, only later to be told that the state was claiming their land. By 1855 many thousands of occupants and purchasers—20,000 in Arkansas, it was said, and many in Illinois—were in this predicament. Meantime, the states were hurrying to sell their lands, some like California selling their swamplands years before patents had been received from the Federal government. There were even instances where two parties each had a title, one from the United States and the other from one of the states.

Remedial Measures Taken

Congress had gotten itself, the Land Office, the states, the surveyors general, and thousands of settlers into a most confused state because of its failure to be more precise in framing the Acts of 1849 and 1850. Elihu Washburne from Illinois, in the House, and Judah P. Benjamin in the Senate drew up a remedial measure that, after being amended in committee of both Houses, and in conference, was signed by Pierce in 1855. It was a most awkwardly phrased act to achieve a desirable objective. In the discussion it appeared that many members thought the Acts of 1849 and 1850 were grants *in praesenti*, as the courts were later to hold; that is, all swamp and overflowed lands became the property of the states from the date of enactment. Nor did the members seem aware that the terms "swamp" and "overflowed" were difficult of interpretation, that disputes would arise between the state agents making the selections and the Federal officials who were to pass upon them, and that there had been many rejections despite the general leniency of land officers. The Act of 1855 acknowledged that the states had clear title to the land they selected (or land that was ultimately approved to them) from the enactment of the two measures. Those who had settled on state swampland, on the assumption that it was public land, were to be allowed ownership if the purchase antedated any purchase from the state. If the state had sold selected but unapproved swampland which in the end was not patented to it, and if it had done so before the United States sold the same tract, no patent was to issue until the state had listed all the lands it had sold with date of sale. This information was to be provided within 90 days.[31]

The indemnity feature of the Act of 1855 provided that states in which swamplands were selected by railroads or entered by preemptors after the adoption of the Act of 1850 but prior to their selection by the state officials should receive either the money equivalent of all such land they lost, if the lands had been sold, or the right to enter an equivalent amount of land if they had been entered with warrants. It is easy to see how absurd this section was, for preemptors or other settlers and investors would scarcely be inclined to buy lands that were swampy and overflowed when there was an abundance of dry land available. The purpose of the swampland act had been to provide for the ditching, leveeing, and draining of land not otherwise attractive. But the states were not content and were selecting lands that might be wet in the spring for a short time but, within the meaning of the Act of 1850, were not swamp or overflowed lands.

This first remedial act took the Land Office and its local agents off the hook and generally satisfied the states. Though they did not secure their selections where settlers had anticipated them, they received either $1.25 an acre cash or scrip. Moreover they were involved in no further administrative expenses with respect to the land they had lost, whereas state lands were sold frequently at less than the government minimum and always on credit, which took long years to close out. The scrip they received could be entered on the best dry land still in public hands within the state.

[31] *Cong. Globe*, 33d Cong., 2d sess., Jan. 2, 1855, Feb. 27, 1855, pp. 160 ff., 961 ff.; Act of March 2, 1855, 10 Stat. 634.

In 1861 we may see the first summary of action under the indemnity provision: $276,126 had been paid in cash and 145,595 acres had been conveyed to the states. By 1915 the amount of cash paid the states was $2,095,468 and by 1922 the amount of indemnity land allowed them was 754,385 acres. The largest cash indemnities were given to Iowa, Illinois, Arkansas, Missouri and Wisconsin and the largest indemnities in land were paid to Iowa, Wisconsin, Florida and Missouri.[32]

Three states received indemnity scrip which appeared valueless since it could only be used in the state in which it was exchanged for "swamp" land, and there was no public land left. They were Illinois (99,675 acres), Indiana (3,715 acres), and Iowa (17,668 acres). Bills were reported from the House Committee on Public Lands in 1886, 1888, 1892, 1896, 1900, and 1907 to allow cash indemnity for this scrip but all failed of enactment, presumably because members of Congress were convinced the states had already done well enough from the donation of the swamplands. One may question whether easterners, who looked unfavorably at most proposals to give land to the western states, would have been so quiescent about the two original swampland acts if they could have foreseen the Pandora's box they opened for Federal and state governments, the courts, land grant railroads, and farmers, and the huge cost in administrative inefficiency.[33] They had been led to believe the act was designed to convey to the states land which was worthless until it could be drained.

Under sanction of the remedial Act of March 2, 1855, the General Land Office allowed settlers to contest state applications for land declared to be swampland and soon 3 million acres were being contested and additional papers were coming "into the office by the bushel."[34] This unexpected result and the continued delay in selecting, approving, and patenting and then selling the swamplands made necessary a second remedial measure, which was adopted in 1857. This measure declared that state selections of swamp and overflowed lands, where vacant and unappropriated and not interfering with any actual settlement, were to be confirmed and patents were to issue. A proviso—members of Congress loved to add provisos to measures to protect an alleged interest without determining what effect it might have on other features of the measure—stated that the act was not to interfere with the Act of 1855 just described. On the day this measure became law, Henry Bennett reported from the House Committee on Public Lands that gross frauds had been perpetrated under the two swampland acts, resulting from the "looseness" with which they had been framed and the limitless time allowed for their operation "under the specious pretence of the reclamation of waste lands. . . ." The Secretary of the Interior at the time of their enactment was blamed for much of the difficulty for his decision to permit the states to make their own selections, instead of requiring them to be made from the evidence of the plats and field notes. Bennett mentioned especially the claim California representatives were making that "all the really valuable land" in the Sacramento and San Joaquin Valleys that was subject to an occasional inundation should be included in their selection.[35]

This was the period when bills drafted by Senate and House committees were reconstructed on the floor. Sometimes in the course of debate they would be referred back

[32] The cash indemnity converted into land at $1.25 an acre together with the land indemnity amounted to 2,430,757 acres, or 15,191 farms of 160 acres each. *S. Ex. Doc.*, 37th Cong., 2d sess., Vol. 1, No. 1 (Serial No. 1117), p. 485. Benjamin H. Hibbard, *History of the Public Land Policies* (New York, 1924), p. 276.

[33] *House Reports*, 51st Cong., 1st sess., 1890, Vol. 2, No. 422 (Serial No. 2808), p. 4; Lokken, *Iowa Public Land Disposal*, pp. 207–208.

[34] *U.S. Supreme Court Reports*, 76:92.

[35] *House Reports*, 34th Cong., 3d sess., Vol. III, No. 265 (Serial No. 914), pp. 1–2. Act of March 3, 1857, 11 Stat. 251.

to the committee of origin but that too frequently meant the kiss of death and the chamber preferred to approve and send them along to the other House where the process would be repeated. Bills were frequently improved and provided with additional safeguards; some infelicities and irreconcilable features were eliminated in the process, but too often the debates, amendments, and minor changes left the measures with loopholes, loose construction, and vague expressions. Consequently, registers and receivers of the local land offices had to contend with measures they were ill prepared to interpret for they had little knowledge of the views of Congress. The commissioner's instructions provided much aid but they too needed further amplification.

The instructions of Commissioner Thomas A. Hendricks of March 18, 1857, to the registers and receivers informed them that the states were entitled to patents "for all of the lands heretofore selected and reported to this office" except as previously provided for by the Act of 1857. Land officers, he declared, were "precluded from entertaining objections against the approval of any land heretofore reported as swamp on the mere ground that they are not lands of that character; hence all contested cases are brought to a close." The officers were instructed to use great care "not to permit the entry or location of any lands interfering with swamp selections." They might well be excused for any uncertainty respecting the interpretation of the act by Hendrick's next statement, to the effect that settlers who had made improvements and planned to preempt their tracts were protected in their occupancy rights. Upon filing proof of settlement and evidence that the land was not swamp or overflowed they would receive their patents. If, however, the land were swamp, their rights could only be determined by further legislation.[36]

[36] Thomas A. Hendricks, Commissioner, to Registers and Receivers, March 18, 1857, Swamp Land correspondence, National Archives.

A summary of the results of the remedial Act of 1857 shows that the measure confirmed many state selections, terminated numerous contests, and resulted in the patenting to the states of "a large amount of lands unquestionably not of the character contemplated by the original grants," according to a later Commissioner of the Land Office. Selections made by the states after March 3, 1857, were, however, subject to contest by settlers.[37]

Notwithstanding the two remedial acts, swampland selections dragged on interminably. The states and their representatives seem to have cast away all moderation in their determination to gain as much land as possible. The table of selections and the acreage actually patented shows how wide was the disparity between the two in some states. It is notable that in the states of Illinois and Iowa where there was the greatest rush for land and where land values were pushed up to the highest levels, state officers were the most liberal in their efforts to acquire the largest possible amount of land by stretching to the utmost their interpretation of "swamp and overflowed."

By 1860 Congress was tiring of the slowness of swampland selections and the insistence of state officials on bringing in new selections for areas in which they had already obtained generous quantities of land that hardly warranted classification as swampland. Their persistence made it necessary for land officers, who had already worked over the plats and field notes a number of times, to give them another going over. This required time which should have been given to speeding up patenting and other tasks in which the Land Office was far behind.

Minnesota and Oregon Benefit

When Minnesota and Oregon were admitted to the Union the Act of 1850 was made

[37] *S. Ex. Doc.*, 50th Cong., 1st sess., 1888, Vol. 8, No. 55 (Serial No. 2510), p. 3.

to apply to them. As originally proposed, the measure would have extended the provisions of the Swamp Land Act of 1850 to all states that had been or might be admitted thereafter. It was amended to include only Minnesota and Oregon, thereby making sure that it would not apply to Kansas. It is not clear whether members of Congress thought there were no swamplands in Kansas, though there were many in Iowa, or whether this was another evidence of the desire by some to discriminate against Kansas. To make sure that the two new states could not benefit from the right to indemnity payments under the Act of 1855, the measure provided that swamplands which had been reserved, sold or disposed of under any previous law should be excluded from its provisions.

To hasten the process of selecting the lands Senators Henry M. Rice of Minnesota and Charles E. Stuart of Michigan wished to establish a time limit for selections; they included a clause—a typically awkward one—to provide that for surveyed lands the limit should be one year from the day of adjournment of the next regular session of each state's legislature, and for unsurveyed lands the deadline should be one year after the approval of the plats. As finally adopted the time was changed to 2 years and the clause affecting unsurveyed lands was changed to provide that selections should end after 2 years from "adjournment, at the next session after notice by the Secretary of the Interior to the Governor of the State, that the surveys have been completed and confirmed."[38]

Joseph S. Wilson, the new Land Commissioner, promptly notified the Governors of Minnesota and Oregon that they could make their selections of swamplands on the basis either of the field notes and plats or of personal inspection by duly constituted officers. He also notified the governors of other states in which swamplands were being selected of the new limitation on selection contained in the Act of 1860. The tenor of his remarks suggests that the Land Office intended to interpret the Act of 1860 more strictly than it had earlier swampland acts. Wilson must have found it disillusioning that not until 10 years after the adoption of the Act of 1850 and the admission of California, did that state sufficiently stir itself to make its selections.[39]

J. M. Edmunds, the new Republican Commissioner of the General Land Office, indicted the swampland legislation in his annual report for 1862.

> In administering these laws difficulties have been encountered from the outstart [sic] not contemplated nor provided for in the original legislation. The end proposed . . . has been attained only to a very limited extent, whilst the demands on the land fund and on the public treasury to satisfy indemnity claims have been enormous.

A measure that was originally considered likely to convey to the states 5 or 6 million acres had through its indefinite terms made it possible for the demands of the states to grow to "gigantic proportions . . . absorbing millions of acres of the most valuable lands of the country. It has created multitudes of interferences with individual titles, resting on actual sales or locations, interfered with railroad and other internal improvement grants, giving rise to innumerable conflicts, and causing enormous outlay to the public treasury in the nature of indemnity."[40] A year later, Edmunds was so troubled by charges of fraud in the selection of swamplands, or false representations as to the character of the land, that he appointed a special agent to investigate. The evidence brought out by the agent seemed to prove the charges but prominent men were involved and the charges were not pressed.[41]

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[38] *Cong. Globe*, 35th Cong., 2d sess., Feb. 28, 1859, p. 1431; 12 Stat. 9. The act produced no discussion, though there was a measure in the House to repeal the Swamp Land Act.

[39] *S. Ex. Doc.*, 36th Cong., 2d sess., Vol. I, No. 1 (Serial No. 1078), pp. 66–67.

[40] *H. Ex. Doc.*, 38th Cong., 2d sess., Vol. 1, No. 1 (Serial No. 1220), pp. 33–34.

[41] *H. Ex. Doc.*, 39th Cong., 1st sess., Vol. II, No. 1 (Serial No. 1248), pp. 18–19.

Commissioner Issues Indictment

Swampland selection, like military bounties, hung on indefinitely and, if anything, became a more serious issue in later years. Though earlier Commissioners had voiced numerous complaints at the dilatoriness of the states in making selections, the dubious character of many selections, and the questionable evidence presented in support of them, it was William A. J. Sparks, Commissioner from 1885 to 1887, who made the most effective indictment. States were allowing their agents from 10 to 50 percent of the amount of swampland recovered by them. In other states presumptive swamplands were sold for low prices before selection and the burden of getting them approved rested on the purchaser. Sparks found swampland selections in Oregon adjacent to desert land entries. In California and Minnesota, where swampland selections were determined by the reports of the deputy surveyors, the integrity of these officers was called in question, although it was usually the practice of the Washington administrators not to question the surveyors' returns. In Oregon, Sparks reported, "The most unblushing frauds have been practiced in the selection of alleged swamp lands by parties claiming as purchasers of swamp lands from the State. By means of false affidavits, fraudulent surveys, and bribery of agents, these parties have managed to obtain control of most of the lands bordering on lakes and water courses, shutting out intending settlers from access to water, and illegally monopolizing for pasturage thousands of acres of public lands, without payment of a dollar to the Government. . . ." Six indictments for forgery and three for conspiracy to defraud the government had been obtained against persons connected with such frauds. In the Oregon, Minnesota, and Iowa swampland frauds, Sparks thought a half million dollars had been saved by the vigorous action of the government.

In 1885, 35 years after the adoption of the second swampland act, 2,608,709 acres were presented as new selections mostly in Florida (1,296,146), Mississippi (409,576), Iowa (351,090), and Illinois (237,610), though the public lands in Illinois and Iowa were long since gone. It took the full time of five special agents to examine the selections in the field, to take testimony concerning them, and to present their information to the government.[42] Ten years later and 45 years after the adoption of the Swamp Land Act, some 135,150 additional acres were presented for confirmation as swamplands, making a total of 80,591,304 that had been selected by representatives of the states, of which 58,479,278 had been patented. Swampland claims pending amounted to 4,725,000 acres. The total acreage of swampland indemnity conveyed to the states was 856,044 acres with claims for 693,164 acres pending, and the total cash indemnity thus far allowed the states was $1,605,455.[43]

Jumping ahead to 1929, one finds the Commissioner reporting that the swampland work continued to be heavy. New applications for 121,547 acres were presented; 11,033 acres were approved and patented; 142,833 were finally cancelled; and 46,881 acres were still pending. In 1932, 4,807 acres of swamplands were patented; 146,865 acres were rejected; and 129,515 acres were pending. In 1963 small tracts were confirmed to California, Florida, and Louisiana amounting to 1,043 acres, bringing the total thus given the states to 64,907,515 acres. Few problems have absorbed as much of the time and attention of Land Office officials, have created so much ill feeling and friction with the states, and few acts have accomplished so little of the purpose for which they were

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[42] *GLO Annual Report, 1885*, pp. 46–48, 213–20, and *GLO Annual Report, 1886*, pp. 37–40, 357–67.

[43] *Land Office Report, 1895*, pp. 79–80 and 300–303.

adopted as the original swampland acts of 1849 and 1860.[44]

Agriculture College Scrip

One final act donating land to all the states, not just those in which there was public land, remains to be fitted into this treatment of Federal grants to the states. Off and on since the founding of the American Republic there had been talk about the creation of a national university, an institution at which science, particularly agricultural sciences, could be taught. When the James Smithson fund of a half million dollars came to the United States there were many who hoped it might be the means of creating a technical school that could aid America in catching up with the best of technical science abroad. Failing that, educators looked to Congress where manufacturers, commercial and transportation interests, and shipping leaders were lobbying to secure subsidies. Elsewhere we have seen how the Agricultural College Act, often referred to as the Morrill Act, was introduced by Justin Smith Morrill, Representative from Vermont, was adopted and signed by Abraham Lincoln on July 2, 1862. It gave to the states not in rebellion 30,000 acres for each Representative and Senator they had in the Congress for the purpose of endowing colleges of agricultural and mechanic arts. States having no public lands were to be given scrip which they were required to sell. They were not permitted to exchange the scrip for land in western states for obvious jurisdictional reasons. Three states evaded, directly or indirectly, this restriction in the act. Rhode Island gave its scrip to Brown University, which entered 46,000 acres in Kansas and then, fearing it had violated the law, sold the remaining scrip and the land for about 42 cents an acre. Illinois conveyed its scrip to the new state university, then called Illinois Industrial University, which entered some 26,000 acres in Minnesota and years later reaped a fine return when the land was sold. New York sold a portion of its scrip to Ezra Cornell who located a half million acres in Wisconsin which he, and later the trustees, held for the University he founded. The balance of the older states which were eager to obtain funds for colleges dumped their scrip in a depressed market and received well below the $1.25 an acre price.

At the conclusion of the war the southern states, when "reconstructed," were given their share of agricultural college scrip and were fortunate enough, because of improved market conditions, to sell it for better prices than had prevailed during 1864–66. The five public land states of the South—Alabama, Arkansas, Florida, Louisiana, and Mississippi —although they possessed over 47 million acres of public land, had to accept scrip because the Southern Homestead Act of 1866 forbade the disposal of land in those states except as homesteads. Congress, under the leadership of George W. Julian, had been persuaded to try this modest experiment in land reform. The measure was thoroughly disliked by southerners because it prevented them from gaining control of an additional portion of their lands and because they felt its obvious discriminatory character, for it only applied to those states. Thus Florida with 17,540,374 acres of public land and Arkansas with 11,757,662 acres were both denied the right to select from these lands the acreage to which they were entitled under the Morrill Act. They had the consolation, however, of selling their scrip at much higher prices than most northern states received.

The Morrill Act did not go far in placing land under the control of the public land states for only 3,520,000 acres were conveyed to them, whereas 7,700,000 acres in scrip were given to the more populous and older

[44] *Land Office Reports, 1929*, p. 16 and *1932*, p. 22; *Public Land Statistics, 1963*, pp. 6, 7, 9.

states.[45] The newer states generally received only 90,000 acres, a quantity that might net them perhaps $100,000. This sum hardly seems sufficient to get under way an agricultural college that could accomplish much in improving farm techniques and bringing to the farmers the best of modern science. Results were to come slowly from the new institutions, yet well before the end of the century their influence was being felt.[46]

Administration of State Lands

By granting land to the states for education, internal improvements, and public buildings, Congress made it necessary for 29 states (30 counting Alaska) to set up their own administrative agencies to select the unlocated tracts, to manage, appraise, lease or sell these and the place grants (such as section 16 and later 36 and others), to protect them from timber thieves, to make collections if land was sold on credit, to eject squatters, determine boundary disputes, and even to survey where the original lines were defective. Also the legislatures had to define policies, determine prices or terms of leasing, provide protection against corrupt use of authority in leasing, selling and making collections. In addition the courts and administrative officers had to interpret the state laws as the Federal courts and administrative officers were interpreting Federal laws. In short, by sharing the lands with the states, the Federal government was making it necessary for the states to duplicate to a considerable degree its legislation and administrative machinery. The states were always pleased to assume this responsibility for it brought land policies closer to the people and enabled them to modify those policies and make them more in harmony with local attitudes.

European immigrants arriving in Wisconsin, Iowa, and Minnesota in 1867 had little or no understanding of the complexities of American national, state, and local governments and were likely to be confused by the fact that all three divisions had land for sale and that construction companies, railroads, and land companies were extensively advertising their holdings and claiming that their lands were superior to any the United States had for sale. Also confusing was the fact that an immigrant preemptor of a tract of government land found his property taxable on the next assessment after he had made his purchase, whereas a buyer from a land grant railroad might not have to pay a tax for 10 or 15 years or even longer. If the immigrant wished to make certain of his title and went to the county offices to investigate he might find that his land, bought from the state, was claimed by a railroad, a river improvement company, a county, or that the United States had not yet conveyed its title to the land. All this and more happened as a result of the diffusion of land management through three government divisions and additional quasi government agencies.

State land policy oscillated between two extremes. On the one hand the states sought to gain from the lands as much revenue as possible to advance the object for which they were given; on the other hand the state wanted to get the lands into private ownership and development as speedily as possible by selling at low prices on long credit. Legislatures and administrative officers were strongly oriented toward the latter policy at the outset and, in a period of laxness in government when ethical standards were not

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[45] Arkansas and Florida sold their scrip in 1872 and 1873 for 90 cents an acre in contrast to the 50 and 55.8 cents Kentucky and Ohio received in 1866 or the 42 cents Rhode Island received in 1865. New York did better than most of the older states, averaging 67 cents an acre. For the sale of the scrip by the states see Paul W. Gates, *The Wisconsin Pine Lands of Cornell University* (Ithaca, N.Y., 1943), pp. 27 ff.; Thomas LeDuc, "State Disposal of the Agricultural College Land Scrip," in Vernon Carstensen (ed.), *The Public Lands, Studies in the History of the Public Domain* (Madison, 1963), pp. 395 ff.

[46] Allan Nevins, *The State Universities and Democracy* (Urbana, Ill., 1962), and *id.*, *The Origins of the Land-Grant Colleges and State Universities* (Washington, 1962).

of the highest, the land endowment was allowed to be dissipated. With some exceptions it can be said that the early experience of the states in land administration reflects little vision or long range planning, a tendency to rush into leasing or selling without proper consideration of the effects of policies being adopted, and careless management of the funds received from sales and leases. Too frequently, legislatures and public officers appeared to shape policies that would enable them to profit personally.

Few states had any reason to be proud of the record of their land management in the early period—particularly before 1862. While their representatives were complaining that the Federal Land Office was permitting land to become monopolized in many areas by men of capital, the state land offices were letting the lands that came to them slip through their hands and pass to speculators in ways that were rarely tolerated in Washington. Later states, indeed some of the earlier ones in their later periods, succeeded in steering their way more satisfactorily between the two positions of quick sales at minimum prices and later sales or leases after appraisal.

The early story of state management of public lands is not a pretty one. In Ohio, administration of the school lands was left in the hands of township and county authorities who hastily put them on the market, arranged 99-year leases, even perpetual leases, and sold land for as little as 5 cents an acre. Numerous special acts were adopted allowing interested parties exceptional leases and sales at prices well below the market. Gross laxness in making and recording collections resulted in heavy losses that, combined with the loss of and embezzlement of funds, all add up to something less than a success story. The major reason for the poor record—other than the petty peculation, the carelessness in business details, the frequent changes of direction by the legislature—was that the people through their local representatives wanted the lands sold, placed on the tax rolls and developed. The revenue from them for education counted less with them and their elected officials. Indiana profited from the errors and misjudgments of Ohio, generally avoided the long leases at low rents, and seems to have safeguarded its funds somewhat better by investing them with the state, but it forced its land into market at early dates and the returns were small. Illinois seems to have provided somewhat better management for its lands. The average price received was $3.78, which was no small achievement at a time when people were continually demanding the right to buy at no more than the government price of $1.25, and wanted no land withheld for better prices in the future.[47]

Michigan, by entering the Union in the midst of the boom period of land sales, was able to take advantage of the great demand for land and began a policy that would have produced a large income for public schools had the boom lasted. In 1837 it established a minimum price of $8 for its school lands, at which price it succeeded in selling 34,000 acres at close to $12 an acre on long credit with a small down payment. When the panic of 1837 occurred both sales and payments ceased and a popular demand arose for lower prices in the future and price adjustments on those already negotiated. In later years the price was sharply reduced and the optimistic hopes of 1836 were not realized. Yet in the long run Michigan did quite well for its school fund, averaging $4.58 an acre from the sale of three-fourths of its holdings by 1885 and retaining the balance for $4 an acre.

Wisconsin profited little from the example of the states which had previously sold their school lands. It pushed them into market early, permitted speculators of influence to buy up the choicer portions at low prices, and lent the school fund on inadequate col-

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[47] George W. Knight, "History and Management of Land Grants for Education in the Northwest Territory," *Papers of the American Historical Association*, Vol. 1, No. 3, pp. 86–103, and 170.

lateral—or none at all—thereby incurring heavy losses.[48]

In the early period states made little or no effort to classify or appraise their lands or to create effective administrative agencies to manage them. The sale of the swamplands produced limited results in the way of drainage or the construction of levees because the administrators of the lands permitted huge areas to pass into private hands, frequently to persons close to officers in political and economic ways.[49]

The experience of Louisiana with its state lands rounds out the story of the accumulation of land by speculators and lumber interests in that state. As soon as the state had selected and gained approval of part of the more than 9 million acres it was ultimately to receive under the Swamp Land Act, it began selling them to raise funds for levee construction. Most of the influential planters such as William W. Pugh, Francis Surget, Frederick Stanton, Stephen Duncan, Levin Marshall, and members of the Barrow family increased their holdings through purchases, generally at $1.25 an acre, of a few hundred or thousand acres. Largest of the purchasers in the fifties was John Slidell who acquired 65,154 acres in his own name and 17,266 acres in partnership with others. Six other purchasers acquired from 20,000 acres to 37,000 acres, including the New Orleans, Mobile and Chattanooga Railroad which obtained 32,122 acres. In the eighties when northern lumbermen were making a concerted drive to acquire the best of the remaining pine and cypress bearing land in public ownership, mill owners and timberland dealers from Detriot, Saginaw Bay, Chicago, Green Bay, and other places cruised the swamplands of Louisiana, made many large purchases and forced the southern lumbermen to move fast to safeguard their supplies. The largest private holding of swampland in Louisiana was that of Jabez B. Watkins of Cameron Parish and Lawrence, Kansas, where Watkins ran a bank lending funds on farmland at 7 to 12 percent interest. Watkins purchased 1,269,371 acres of swampland, 12,860 acres of the Louisiana Confederate Military Bounty Grant of 1886, which may well have been specially selected swamplands, in addition to 145,000 acres of United States land. Mortgages on these lands constituted 30 percent of the capital of his bank.[50] The 14 next highest buyers acquired among them 540,000 acres.

Arkansas, with 7,686,575 acres of swamplands in the possession of the state and great need to construct levees and drain its better lands, had an opportunity to show what good work could be done by a state administering this bounty. Instead its record revealed careless, bordering on corrupt management, levees that were deceptively built and unable to withstand heavy flood pressures, scrip fraudulently issued, and administrative confusion.[51]

A recent California historian has found little to praise and much to condemn in that state's administration of its large school and swampland grants. Not only was the state administration woefully inefficient but its record was constantly marred by corruption. State officials soon became large holders of state lands by using the inside information their office made available to them. They permitted associates to hold land for a down payment to the state of less than a cent an acre until the demand forced prices up. Then they were able to sell their contracts for a big increase in price over the state minimum

[48] *Ibid.*, pp. 103–117.

[49] *Ibid.*, pp. 42–86; Orfield, *Federal Land Grants to the States;* Gerald D. Nash, "The California State Land Office, 1858–1898," *The Huntington Library Quarterly*, 27 (August 1964), 347 ff.; Bogue, *Patterns from the Sod, Land Use and Tenure in the Grand Prairie, 1850–1900.*

[50] Allan G. Bogue, *Money at Interest: The Farm Mortgage on the Middle Border* (Ithaca, N.Y., 1955), p. 198.

[51] Robert W. Harrison and Walter M. Kollmorgen, "Land Reclamation in Arkansas under the Swamp Land Grant of 1850," *Arkansas Historical Quarterly*, VI (Winter 1947), 369–418.

without having taken any risk or made any significant investment. Large purchasers of swamplands are even shown as opposing and preventing the inauguration of drainage measures.[52]

Few states felt bound to effect drainage of the swamplands and instead used them for such other purposes as were exciting attention. Consider the experience of Minnesota which received 4,706,591 acres. When the lands were being selected the people of the new states were more concerned about railroads than drainage; consequently the legislature granted 7 sections of swamplands for each mile of railroad constructed to a number of companies; for a line that became a part of the Great Northern Railroad it gave 10 sections per mile. It also voted lands for road construction, for an insane asylum, a deaf and dumb school, normal schools, a state prison, and a river improvement company.[53]

Gradually an increasing sense of responsibility in public administration and a wider interest in the purposes for which the grants were given contributed to improved management of state lands. Also, in later enabling acts Congress prescribed minimum prices below which the lands were not to be sold, or else it required that they be appraised, offered at public auction and sold at no less than the appraised price. Leases were limited to 5 years; Oklahoma mineral land sales were required to be made to the highest bidder in sealed bids.[54] The result was that the later states have built up large endowment funds for the support of common schools, universities, and other state institutions. Thus the State of New Mexico reported in 1966 that it had $299,079,150 in permanent funds derived from its various land grants of which $239,088,287 were for common schools and $36 million for the University of New Mexico, a military institute, and two schools for the handicapped. The total income from lands and endowment that year was $33,520,908. The State of Washington reported an income from timber and land sales, royalties and easements from its public lands for the biennium 1954–56 of $10,725,786, to be allocated to the various purposes for which the grants had been given.[55] Other states have also done well. In fact, one can say that the newer states have done as well as has the Federal government in the management, sale, and leasing of public lands.

Detailed historical studies are needed of the management and disposal of the public lands of these newer western states on a scale comparable to those prepared by Addison E. Sheldon on Nebraska, Roy Lokken on Iowa, and Matthias Nordberg Orfield on Minnesota.[56]

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[52] Nash, "The California State Land Office, 1858–1898," *The Huntington Library Quarterly*, 27:347–56.

[53] Ben Palmer, "Swamp Land Drainage with Special Reference to Minnesota," University of Minnesota, *Studies in the Social Sciences*, No. 5 (Minneapolis, 1915), pp. 90 ff.

[54] Orfield, *Federal Land Grants to the States*, pp. 49–51.

[55] Commissioner of Public Lands, *Thirty-Fourth Annual Report* (1956), p. 50.

[56] In addition to the detailed examinations of state land policies I have mentioned I should include Jerry O'Callaghan's monograph on "The Disposition of the Public Domain in Oregon," which was published as a committee print of the Committee on Interior and Insular Affairs, United States Senate, 86th Cong., 2d sess., November 1960. It has a chapter on the grants to Oregon.

Sanford A. Mosk in his fine study of "Land Policy and Stock Raising in the Western United States," *Agricultural History*, XVII (January 1943), 14–30, examines the public land policies of Arizona and New Mexico. He found that attempts to prevent speculative purchasing were unsuccessful and that in Arizona much the larger proportion of the tracts sold went to the large livestock interests. The scattered character of the educational lands naturally made their management and sale more difficult than grants which could be located on more desirable tracts.

CHAPTER XIV

Land Grants for Railroads and Internal Improvements

Congress early recognized that public aid for the construction of roads, canals, river improvements, and railroads was necessary to make possible the settlement of the interior lands and that these internal improvements would increase the demand for the public lands and enhance their selling price.[1] The 5-percent clause in the Ohio Enabling Act marked the first sharing of income from land revenues with the states. The legislatures of six public land states were allowed to dispose of three-fifths of the 5 percent for roads, with Congress appropriating the balance; the remaining public land states received the full 5 percent of the net proceeds to appropriate for roads or education as they saw fit. The sums received by the states do not appear large today but the allocation of $712,744 to Illinois and $596,634 to Ohio before 1860 provided for numerous projects in those days. By 1883 a total of $7,123,549 had been distributed to the states.[2]

[1] For a useful study of the road work required of all property owners in New York and the possibility of commuting it to a cash payment in the colonial and early national period see Gould Colman, "Highway Development in New York State, 1691–1906" (Master's thesis, Cornell University, 1953). It is interesting to note that New York set aside 50,000 acres of public land to compensate persons building bridges or laying out roads on the state's public lands. *Ibid.*, p. 11.

[2] California was the one state that did not receive a share of the 5-percent fund for many years after its admission. Not until 1906 did Congress vote it the full 5 percent of the net proceeds from sales since 1850. Thomas Donaldson, *The Public Domain*, p. 238; Act of June 27, 1906, 34 Stat., Part 1, p. 518.

As originally planned and applied to the early states two-fifths of the 5-percent fund was to be used by the Federal government to build roads and other internal improvements leading to the West, all of which, like the money spent for the same purpose within the western states, would draw settlers and land buyers and assure continued demand for the land. Whatever doubts Congress might have had about appropriating money to the states for road building, it could have none about using part of this fund itself for such construction, for the Constitution declared that Congress "shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" and to establish post roads.

The Cumberland Road

In 1806 Congress authorized the laying out of a road 4 rods wide from Cumberland, Maryland, to the Ohio River and appropriated $30,000 from the 2-percent fund to begin it. The road was to be "raised in the middle of the Carriage-way with stone, earth or gravel or sand" and was to be well drained. Preliminary surveys led to the selection of a route by way of Uniontown and Washington, Pennsylvania, to Wheeling, Virginia, on the Ohio. In 1811 construction was begun and by 1818 the Cumberland, or National Road, had been completed to Wheeling, though in somewhat rough form. Water transportation being available there, the necessity for ex-



BUILDING THE MISSISSIPPI VALLEY RAILROAD IN KANSAS.

From A. D. Richardson,
Garnered Sheaves

tending the road on into Ohio did not appear quite so pressing. Not until 1833 was it to reach Columbus. All accounts indicate that the completion of this route across the Cumberland Mountains, which provided fair connections with Baltimore, gave rise to a great volume of traffic. Settlers moved west and livestock, grain, and other commodities moved east to market. The obvious success of the Cumberland road was not to lead the United States into an enlarged program of road building because even before it was completed the canal era had begun and canals rather than roads were being demanded.[3]

Canals of Early Interest

At the request of the Senate, Albert Gallatin in his famous report of April 4, 1808, on "Roads and Canals" had drawn attention to the possibility of developing an intercoastal waterway from Boston to Georgia by the construction of four canals across headlands and had suggested the feasibility of all the major canals which were later undertaken to connect the rivers flowing into the Atlantic with those flowing into the Ohio and the Great Lakes.

For the large interstate projects he maintained that "the General Government can alone" carry them out.[4] Prominently mentioned in the Gallatin report were canals to connect the Hudson with Lake Huron and Lake Erie. Efforts to gain congressional aid for a canal across New York State were unavailing though there was some discussion of diverting a part of the proceeds from Calhoun's bonus bill to that end. Madison's veto laid the matter of Federal aid to rest.[5]

[3] Archer B. Hulbert, *The Cumberland Road*, "Historic Highways of America," Vol. 10 (Cleveland, 1904), passim; Caroline E. MacGill, *History of Transportation in the United States before 1860* (Washington, 1917), pp. 15 ff.

[4] *American State Papers, Miscellaneous*, I, 724–921.

[5] *Annals of Congress*, 14th Cong., 1st sess., pp. 295, 361, 934, 1062.

Then, taken up by New York and pushed to completion in 1825, the Erie Canal was a spectacular success in showing the results that could be expected from the building of internal improvements into largely undeveloped areas. Before its completion profound changes were occurring along its route in the agricultural development of the area it was to serve, in the shift from subsistence to commercial agriculture, and in the emergence of new flourishing cities of Buffalo, Rochester, Syracuse, Utica, and the rapid growth of Albany, and most of all New York, which thus captured the trade of the interior.[6] The canal era came to flower with the completion of the Erie. State after state hoped through canal construction to emulate New York's success.

Among the canal projects undertaken as a result of the remarkable success of the Erie were the Welland Canal around the falls at Niagara on the Canadian side,[7] Pennsylvania's costly and unsuccessful effort to connect the waters of the Susquehanna with the headwaters of the Ohio,[8] the Chesapeake and Ohio Canal, and the James River and Kanawha Canal.[9] These were planned to return to Montreal, Philadelphia, Washington, and Richmond trade with the interior they had lost to New York.

John Quincy Adams had a breadth of view regarding the powers of the Federal government that was forward-looking and modern, in contrast to those of Madison and Monroe.[10] He had no doubts about the power to aid in building internal improvements or the wisdom of such a policy.

During his administration and that of the National Republicans an astonishing number of major enterprises that were to absorb huge sums before they were completed were undertaken by a young country of less than 12 million people, widely scattered, and possessed of no great wealth. Surveys for roads and canals were energetically pushed by the Army Engineers, and Congress was prodded by local interests to adopt a series of measures that put the government squarely into the financing and to a certain extent into the construction of roads and canals. Included were post or military roads in Alabama, Florida, Arkansas, and Michigan, as well as the extension of the National Road in Ohio; improvement of the navigation of the Ohio and subscriptions to the stock of the Louisville and Portland Canal ($235,000) to be built around the falls of the Ohio at Louisville; the Chesapeake and Ohio Canal ($1 million) to parallel the Potomac River to Cumberland, Maryland; the Chesapeake & Delaware ($450,000) to unite these two great bays; and the Dismal Swamp Canal ($200,000) to link by water Chesapeake Bay and Albemarle Sound in North Carolina.[11]

While commercial interests of the seaboard were hatching these and many other schemes for the building of canals to extend into the interior from the coast, the people of the

[6] Ronald E. Shaw, *Erie Water West. A History of the Erie Canal, 1792–1854* (Lexington, Ky., 1966), pp. 32, 63–69, 299. The total of collections to 1883, when tolls were abandoned, was $121,461,871 or an average of more than $2 million yearly. The original cost of the canal was $7,143,789, which with all costs, including enlargement, was more than taken care of by tolls.

[7] Hugh G. J. Aitken, *The Welland Canal Company. A Study in Canadian Enterprise* (Cambridge, Mass., 1954), pp. 20–21.

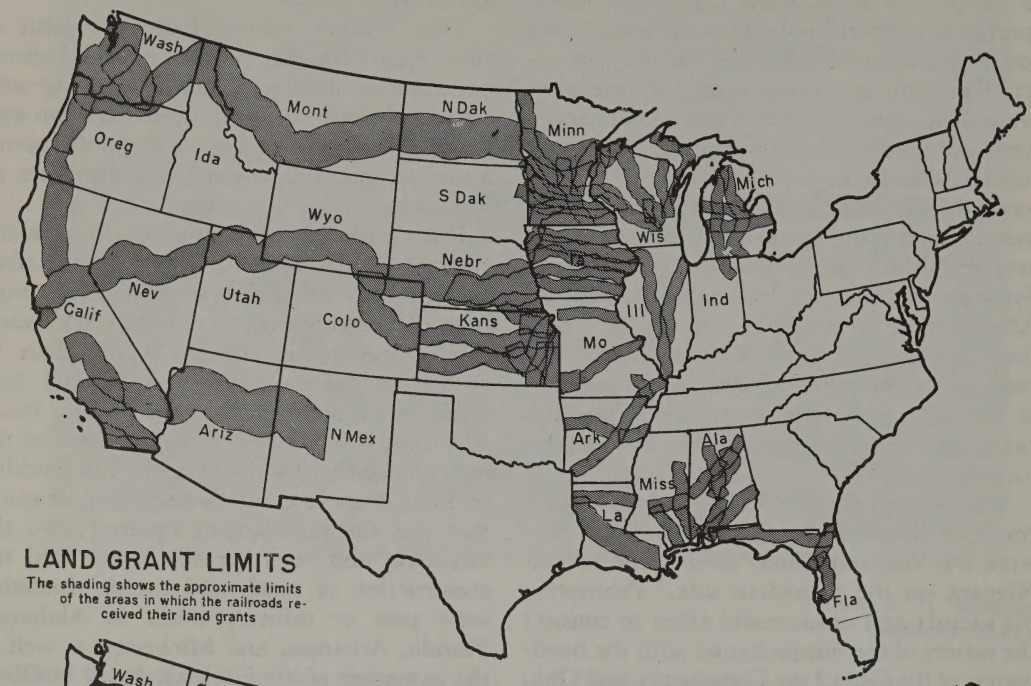
[8] Richard I. Shelling, "Philadelphia and the Agitation in 1825 for the Pennsylvania Canal," *Pennsylvania Magazine of History and Biography*, 62 (April 1938), 175 ff.; Avard L. Bishop, "The State Works of Pennsylvania," *Transactions of the Connecticut Academy of Arts and Sciences*, XIII (New Haven, 1907), 149 ff.

[9] Wayland Fuller Dunaway, *History of the James River and Kanawha Canal* (New York, 1922), *passim*. Walter S. Sanderlin, *The Great National Project. A History of the Chesapeake and Ohio Canal* (Baltimore, 1946).

[10] Samuel Flagg Bemis, *John Quincy Adams and the Union* (New York, 1956) displays Adams' rugged nationalism.

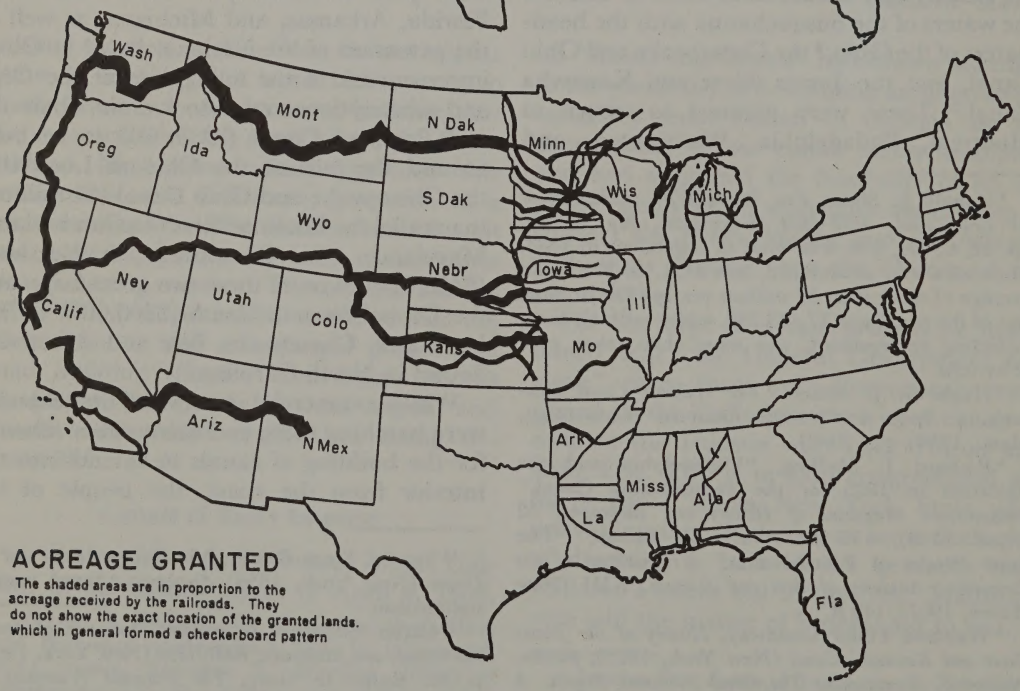
[11] Carter Goodrich, *Government Promotion of American Canals and Railroads, 1800–1890* (New York, 1960), p. 41; Ralph D. Gray, *The National Waterway. A History of the Chesapeake and Delaware Canal, 1769–1965* (Urbana, Ill., 1967), passim.

FEDERAL LAND GRANTS FOR RAILROADS



LAND GRANT LIMITS

The shading shows the approximate limits of the areas in which the railroads received their land grants



ACREAGE GRANTED

The shaded areas are in proportion to the acreage received by the railroads. They do not show the exact location of the granted lands, which in general formed a checkerboard pattern

Bureau of Land Management

interior were not indifferent to canals. Ohio, Indiana, and Illinois—in 1820 they had populations of 581,000, 147,000, and 55,000, respectively; and 937,000, 343,000 and 157,000 by 1830—were planning internal improvements and were pleading for Federal aid in the form of alternate sections of land for a depth of 5 miles on each side of the proposed routes. They had little prospect of carrying their canals to completion for many years, so sparsely populated were they and so narrow was their tax base, but with Federal aid they might accomplish their objectives. Congress having established the principle, at least for the time, that interstate canals and roads were fit projects for Federal appropriations, one might expect it to have made money grants for these interior states but, with an abundance of fertile land available, it seemed easier to use that. Representatives of eastern states, some of which had received money grants for their favored canals, growled about the extreme generosity being displayed toward the West. In 1827 and 1828 Congress met western pleas for aid by six acts giving land to the States of Ohio, Indiana, Illinois, and Alabama for the building of canals to connect Lakes Erie and Michigan with the Ohio and Mississippi Rivers, for the improvement of the navigation of the Tennessee River at Muscle Shoals, and for 100 miles of road construction in northwestern Ohio.[12]

Grants for Ohio Roads

This was not the actual beginning of land grants for internal improvements, which date back somewhat earlier. By the Treaty of Brownstown of November 25, 1808, with the Chippewa, Ottawa, and other tribes, there was ceded to the United States a tract of land 120 feet wide running from the rapids of the Miami of Lake Erie to the western border of the Connecticut Reserve and "all the land within one mile of the said road, *on each side thereof*, for the purpose of establishing settlements along the same . . . ." The treaty also ceded a 120-foot wide stretch of territory extending from Upper Sandusky to the boundary of land ceded by the Treaty of Greenville, for a "road only . . . ."[13] Here is an early instance of what became a not uncommon practice: incorporating in Indian treaties, which are subject to the ratification of the Senate only, provisions for the distribution of land being ceded before it could become part of the public domain and subject to the general land laws; such provisions might not have been acceptable to the House of Representatives. Congress implemented the Brownstown Treaty by an Act of February 28, 1823, authorizing the State of Ohio to lay out and construct the road from the Miami rapids to the Western Reserve, granted it a strip of territory 120 feet wide along the route "together with a quantity of land equal to one mile on each side thereof" to aid in financing construction; if the cost was exceeded by the return from the land the surplus was to be used for maintenance of the road. The road was to be completed in 4 years and the land was not to sell for less than the government minimum price. The grant totaled 60,000 acres.[14]

The second 120-foot right-of-way provided for in the Brownstown Treaty was not made use of by the Federal government. Instead, to aid the Columbus and Sandusky Turnpike Company to build a road connecting these two points and intersecting the Maumee road, Congress granted Ohio "one half of a quantity of land equal to two sections, on the western side of said road . . . ." Though awkwardly stated, and not fully developed in the Act of 1827, this was the beginning of a practice to be followed in most future instances of granting land for the construction of specific internal improvements: donating alternate sections or one half of the land

[12] Acts of March 2, 3, 1827, and April 17, and May 23, 24, 1828, 4 Stat. 234, 236, 242, 263, 290, 305.

[13] Charles J. Kappler, *Indian Laws and Treaties* (Washington, 1904), II, 100.

[14] 3 Stat. 727; William E. Peters, *Ohio Lands and Their Subdivisions* (Athens, Ohio, 1918), pp. 316 ff.

within a strip along the line of the project and reserving the other half for sale. The precedent was not fully spelled out, for in the 1827 Act and in an amendatory Act of April 17, 1828, two and three adjacent sections in alternate tiers of sections were granted whereas in later measures no adjacent sections were allowed. In later donations the price of the reserved sections was doubled so that it could be argued, as the *Congressional Globe* shows *ad infinitum*, that by giving half the land away and thereby making possible construction of the road, canal, or railroad, the government would recover from the reserved sections as much as it would have received from the whole. The Turnpike Company, capitalized at $100,000, received 31,596 acres toward construction of the route. This was of crucial importance to its completion for the donation provided, when sold, 67 percent of the cost.[15] With two turnpikes and the National Road, constituting a total of 336 miles, plus such mileage as was being built by the state through the 3-percent fund Ohio was not doing badly.

Roads from Indian Lands

The practice of acquiring Indian land for road construction without having it become a part of the public domain was resorted to again in the negotiations with the Potawatomis in Indiana in 1827. After acknowledging the "attachment" the Indians felt toward the American people (which contemporaries would have regarded as mere mockery), and stating their wish to demonstrate their liberality and to "benefit themselves by creating facilities for travelling and increasing the value of their remaining country," the Potawatomis agreed to cede to the United States, to aid in the construction of a road from Lake Michigan to the Ohio River, a strip of land 100 feet wide and a section of land for each mile of the road. The treaty provided that the land thus ceded should be at the disposal of the State of Indiana, though this was struck out by the Senate before ratification.[16] A statute of March 2, 1827, then donated the lands the Indians had ceded to the state. Construction of the road was pressed forward in 1830–35, and completed in the latter year. A total of 170,580 acres was received for the road. Sales came to $252,136 and the cost of construction to $251,848. Rarely did grants turn out so well.[17]

Canal Era

There was much greater public interest in canals than in turnpikes, although the latter probably were used by more people. Preliminary to voting money and land for in-

[15] 4 Stat. 242, 263; Peters, *Ohio Lands*, pp. 312 ff.; Harry N. Scheiber, "Internal Improvements and Economic Change in Ohio, 1820–1860" (Ph.D. dissertation, Cornell University, 1962), pp. 362–63. Mention might also be made of Zane's Trace, a route passable for horsemen through the forest from Brownsville to Wheeling for which Ebanezer Zane was permitted to enter 1,920 acres with military warrants on choice spots before the survey lines were run. Peters, *Ohio Lands*, pp. 184 ff., and map in Francis P. Weisenburger, *The Passing of the Frontier, 1825–1850*, Vol. III of Carl Wittke, (ed.), "*The History of the State of Ohio*" (Columbus, 1941), 99.

[16] Kappler, II, 274; 4 Stat. 234. It was in this same treaty that 44¼ sections or 28,480 acres were listed to be conveyed to individual Indians subject to the approval of the President. Like so many other individual reserves provided for in treaties with Indians in Ohio, Indiana, Illinois, Alabama, Mississippi, and Kansas, the small reserves in most instances seem to have fallen into the hands of whites rather quickly. Tipton, who had a major part in negotiating the treaty, himself was a grantee of numerous individual Indian reserves. He was also a strong advocate of the Wabash and Lake Erie Canal but in arranging to locate some of these individual reserves in the vicinity of the proposed route of the canal he was selecting the most valuable tracts on which towns and cities later developed, thereby depriving the Canal Company of substantial income. He compensated for this later by successfully urging a supplementary grant to make up for the individual reserves he and his associates had selected. I have told this story in considerable detail in my introduction to *The John Tipton Papers*, Nellie Armstrong Robertson and Dorothy Riker (eds.), (3 vols., Indianapolis, 1942), I, 31 ff.

[17] G. Prather, "The Struggle for the Michigan Road," *Indiana Magazine of History*, 39 (March 1943), 1 ff. and *id.*, "The Construction of the Michigan Road." *Indiana Magazine of History*, 50 (September 1944), 243 ff.

ternal appropriations was the authorization for surveys which ordinarily preceded all other action. On March 2, 1826, Congress appropriated $20,000 for a survey for a canal across Florida, which, however, was not to be followed up for a century; it was to be many years before Florida had gained sufficient population and representation to compete with the fast growing states of Ohio, Indiana, Illinois, and Alabama for attention to its needs.[18] Ohio, the most populous and fastest growing state west of the Alleghenies, was first caught in the craze for canal building in the early 1820's. Reports of the almost miraculous effect of the Erie Canal on communities along its route, the ease with which money for canals could be raised, and the promise of high return on land investments led Ohio landlords like Thomas Worthington, shippers like Ebenezer Buckingham, and traders, farmers, and merchants to think canals could bring the same good fortune to Ohio. In 1825 the state adopted a canal building program calling for canals from Portsmouth on the Ohio to Cleveland by way of the Scioto, the Muskingum, and Cuyahoga Rivers and from Cincinnati up the Miami River to Dayton with the hope at some later time of extending the Miami Canal north to Lake Erie. The two main canals were begun promptly, the money being easily raised without Federal aid. By 1832, 399 miles of canal had been completed at a cost of $5,145,000. While the expectations of growth, rise in land values, and economic expansion may have been somewhat exaggerated, the favorable effect of the canals upon the development of Ohio led the state into a much larger construction program in 1836 and 1837.[19]

One other projected canal in Ohio, which had less political support in that state and was actually an Indiana enterprise, did receive a Federal land grant in 1827. The Wabash and Erie Canal was planned by Hoosier promoters to connect the headwaters of the Maumee and the Wabash Rivers and thereby provide water transportation from Lake Erie to the Ohio River. Though Indiana contained only 147,178 people in 1820, they were as enthusiastic about canals as were the people of Ohio and New York. They first persuaded Congress in 1824 to grant a strip of land 360 feet wide through the public lands as a route for a canal to connect the Wabash with Lake Erie.[20] The act also reserved from sale each section of land through which the canal "may pass" but in another section it declared that "nothing in this act . . . shall be deemed to imply any obligation on the part of the United States to appropriate money to defray the expense of surveying or opening said canal." Yet less than 3 years later Congress authorized its first land grant, other than the equivalent of a right-of-way, to Indiana for the Wabash and Erie Canal. It consisted of one half the land in alternate sections for a distance of 5 miles on each side of the canal "from one end thereof to the other."[21] This was a most indefinite measure for it did not make clear where the canal was to begin or to end. Unlike later land grant measures, the grant for the Wabash and Erie did not specify whether odd or even sections were to be selected by the state nor did the act require the double-minimum price for the reserved land within 5 miles of the route. The canal was to be commenced within 5 years and completed in 20. If not then completed, the state would be required to reimburse the United States "the amount of any lands previously sold," although the titles of purchasers from the state were to be valid.

An odd feature of the grant that soon became apparent was that a portion would be in the State of Ohio, though the grant was specifically given Indiana. An agreement was worked out in 1829, after Congress had authorized such action, whereby Ohio was to receive the land granted for the canal within its borders and would build the canal from

[18] 4 Stat. 193.

[19] Scheiber, "Internal Improvements and Economic Change in Ohio."

[20] Act of May 26, 1824, 4 Stat. 47.

[21] Act of March 2, 1827, 4 Stat. 236.

the Indiana line to the lake.[22] Conflict over the Ohio–Michigan boundary and delay in surveying the lands held up the selection of the grant and construction of the Ohio portion of the canal. By 1842, however, the entire 87-mile stretch from the Indiana border to Lake Erie was completed and in operation. In 1843 the Wabash and Erie Canal was in operation from Lafayette, Indiana, to Toledo, Ohio.

It has been pointed out that in 1828 the Adams and Jackson forces in Congress were vying with each other to win favor in Ohio; the one advocated a grant of land on the alternate-section pattern for the construction of the Miami extension to connect with Lake Erie directly or with the Wabash and Erie Canal; the other advocated a 500,000-acre grant to aid in completing canals already under way. The Adams forces seemed to be in control and had succeeded in gaining priority for their measure to aid the Miami extension when the Jackson faction added an amendment to give 500,000 acres to aid in completing the canals then under way, with the privilege of selecting the lands from any then unsold and subject to private entry, exclusive of the alternate sections along the canal and road grants. In this form the act was adopted. Ohio thus received a double grant. The 500,000-acre grant was a forerunner of the provision in the Preemption-Distribution Act of 1841 giving to each state that amount of land for internal improvements.[23]

Ohio was not greatly interested in either the Wabash or the Miami extension canals because the northwestern portion of the state was its least developed area. In fact, it appears that Ohio contemplated using the grant intended for the Miami extension for other purposes. To prevent that, Congress enacted a measure on April 2, 1830, declaring that if the state applied the land "to any other use whatever, than in the extension of the Miami Canal, before the same shall have been completed," the unsold lands should be forfeited to the United States and Ohio should repay it for all the lands it had sold. In this same act it was provided that where any lands to which the state was entitled under the grant had been sold the Governor was authorized to select other lands in lieu thereof.[24]

Ohio's record in handling its canal grants of 1,230,525 acres (including its share of the Wabash grant, the grant for the Miami Canal and the general grant of 500,000 acres) does not compare favorably with that of Illinois. Its first decision, to select even sections, meant that the canal would lose section 16, that being a school section, and though it could get lieu lands elsewhere they would not be so close to the canal. Like all western states, Ohio had to steer between its desire to derive as large a return from the land as possible to finance the canals, and the eagerness of settlers to get lands cheaply and of others to have them developed speedily. In offering its canal lands for sale the legislature, badgered from both sides, vacillated, permitted insiders to buy up large tracts contrary to law, managed to have some illegal sales cancelled though others were confirmed, sold its best lands at low prices and then tried to extract high prices from refuse tracts, and on the whole showed that state management was no more, and probably less, ably handled than Federal.[25]

The Miami Extension Canal and the lands

[22] Logan Esarey, "Internal Improvements in Early Indiana," *Indiana Historical Society Publications*, V (Indianapolis, 1912), 89.

[23] Scheiber, "Internal Improvements and Economic Change in Ohio," pp. 363–64.

[24] 4 Stat. 393.

[25] Scheiber, "Internal Improvements and Economic Change in Ohio," pp. 365, 451 ff. Partial statistics of sale of Ohio canal lands show that 496,022 acres of the 500,000-acre grant brought to 1846 an average of $1.25 an acre, 304,730 acres of Miami canal lands brought an average of $1.32 an acre and 103,437 acres of Wabash and Erie lands brought an average of $4.00 an acre. In addition 15,717 acres of Ottawa-ceded reservation brought an average of $1.39 an acre.

given for it and for the Ohio canals generally, were largely located in northwestern Ohio. For many years northwestern Ohio had good reason to complain about the withholding of both canal and Federal lands from sale, considering the degree to which speculation in them was permitted and the retarding effect the large speculative purchases had upon the growth of the area. The development of this area, which had been somewhat lacking in transportation facilities, was perhaps held back by the land policies adopted more than it was aided by the construction of the canal. Yet one must not discount the nearly $1,800,000 the State of Ohio received from the sale of its canal lands which aided materially in getting canals under way and in providing financial aid when it was most needed.

Indiana interpreted the grant for the Wabash and Lake Erie Canal to extend from Lake Erie or, after 1828, from the Ohio boundary to the head of navigation on the Wabash River at the mouth of its tributary, the Tippecanoe, near where the town of Lafayette had developed. For that purpose it received 234,246 acres and in 1830 was allowed to select from the alternate sections reserved to the United States an additional 29,528 acres to compensate for the land John Tipton and his associates had located for individual Indian reserves. (The privilege of selecting lieu lands from the reserved sections was rarely permitted for in effect it was a subversion of the theory that by granting part of the land away the government would the more readily sell the half it reserved, possibly at higher prices.[26]) On February 27, 1841, the Canal Company was also permitted by Congress to select from any land subject to private entry in the state lieu lands equivalent in amount to what it had lost because of existing preemption rights on its alternate sections.[27] The next year it was authorized to select 24,219 acres of unsold land in place of the same amount to which it was entitled but which had been previously selected by Tipton and others for individual reserves of Miami Indians under the treaties of 1837 and 1839.[28]

Among other projects adopted by Indiana in its Mammoth Internal Improvement Act of 1836 was the extension of the Wabash and Erie Canal from Lafayette to Terre Haute. The route was then to be diverted to the White River, which it was to follow for a considerable distance, and then to cut across the state to the Ohio River at Evansville. The vagueness of the 1827 Act of Congress, granting land for the canal, seemed to Hoosier representatives to justify selecting alternate sections along the route from Lafayette to Terre Haute, which portion of the canal had apparently not even been contemplated in 1827. Congress sanctioned these selections in an Act of February 27, 1841, and 4 years later extended the grant from Terre Haute, where the canal leaves the Wabash River, to Evansville. It also granted to Indiana one half of all the remaining public lands in the Vincennes district, except for the alternate reserved sections within 5 miles of the canal. By this time the best of the lands in the district had already been selected but an 1845 Act did bring the state an additional 796,630 acres. The last of this series of measures granting land for the Wabash Canal was adopted in August 7, 1848, when the state was authorized to select an additional amount of land then subject to private entry that would provide it with five sections of land for the entire mileage of the canal from the Indiana–Ohio line to Evansville.

The Wabash Canal, 458 miles in length from Evansville to Toledo, was the longest to be carried to completion in the United States. The state was entitled to receive in Indiana under the Act of 1848 and earlier acts a total of 1,238,400 acres, but with the bonus of half the unallotted and unreserved lands remaining in the Vincennes district it

[26] 4 Stat. 416.
[27] 5 Stat. 414.
[28] *Ibid.*, p. 542.

actually received 1,480,409 acres plus the 266,535 acres granted for it in Ohio, or a total of 1,746,944 acres in the two states. This was the largest land grant Congress made for canals or river improvements.[29]

Illinois, with its scattered 55,000 people in 1820, a property tax base at the most not exceeding 200,000 acres, and a state income that would not pay the Governor's salary today, was as eager to build roads and canals as were eastern and better developed states. Shortly after admission its Representatives urged Congress to grant it land for the construction of a canal to connect the Illinois River, a tributary of the Mississippi, with the Chicago River which flowed into Lake Michigan. Congress responded in 1822 with a measure authorizing the state to survey and mark through the public lands a route for the canal, giving it 90 feet on each side and requiring that every section of land through which the canal should pass be reserved from sale. The state was permitted to use timber, stone, gravel and sand on adjacent public lands for construction purposes. The route was to be surveyed within 3 years and the canal was to be completed "suitable for navigation within twelve years."[30] This tiny grant was the first land donation for waterways and the forerunner of the extension grants to Indiana for the Wabash and Erie Canal.

Optimistic as the people of Illinois were, there was slight prospect of their being able to do anything about the canal for many years to come. Subsequently Congress, during its great burst of enthusiasm for internal improvements, in 1827 made a more generous grant for the Illinois and Michigan Canal. By an Act of March 2, it granted "a quantity of land equal to one-half of five sections in width, on each side" of the canal, and reserved each alternate section for government sale. The lands were to be used solely for the canal and were to be subject to sale as soon as they were selected. Construction of the canal was to begin within 5 years and was to be completed within 20 years.[31]

Before any work was done and after years of frustration and uncertainty as to the ability of the state to build such an expensive canal, during which period the new steam railroad seemed certain to become a threat to canal transportation, the State of Illinois on December 20, 1832, memorialized Congress to allow it to use the canal grant for a railroad if subsequent studies justified such action. Congress responded in what was the first railroad land grant act, authorizing Illinois to use the lands for a railroad.[32] Further delay followed, during which it was realized that, promising as the railroad was, it would not displace water transportation. In 1836 and 1837 the state again authorized the construction of the canal as well as numerous railroads and river improvements and voted to borrow large sums to finance the extensive program. In common with all the states which were involved in large programs of internal improvements in the late thirties, Illinois was brought close to bankruptcy.

Illinois was more fortunate than some states in that a portion of its canal grant was located in what soon became the mushrooming city of Chicago. Also, its officials decided not to unload the grant at a time when values were low but to hold it for a substantial rise. As early as 1830 canal lots in Chicago were bringing high prices and over a million dollars was grossed from sales in a few years time. Most of the land and city lots were sold between 1848–56. From its 324,283 acres the canal trustees had grossed $5,858,547 by 1871. This was a far better record than other states made in disposing of their internal improvement lands.[33]

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[29] Esarey, "Internal Improvements in Early Indiana," *passim;* Donaldson, *The Public Domain*, p. 258.

[30] 3 Stat. 659.

[31] 4 Stat. 234.

[32] Act of March 2, 1833, 4 Stat. 167; John H. Krenkel, *Illinois Internal Improvements, 1818–1848* (Cedar Rapids, Iowa, 1958), p. 33.

[33] By the time the state had selected its land some 32,895 acres to which it would have been entitled had been lost to others either as preemptions, cash purchases, or possibly as school lands. On Aug. 3,

SALES OF ILLINOIS AND MICHIGAN CANAL LANDS[a]

Year	Acres	Amount	Lots	Amount	Total
1848	48,809	$212,154	2,227	$557,544	$769,698
1849	3,338	25,828	339	70,474	96,302
1850	6,443	40,212	325	82,750	122,962
1851	23,848	111,402	409	109,576	220,978
1852	32,871	289,911	692	198,903	488,814
1853	22,987	283,979	705	406,391	690,370
1854	42,559	335,732	401	272,548	608,280
1855	25,651	213,593	295	255,163	468,756
1856	10,922	130,683	342	84,177	214,860
1857	1,158	31,732	-----	10,165	41,897

[a] Compiled from *Annual Reports* of the Illinois and Michigan Canal, 1848–1857.

Early Improvement of Muscle Shoals

Congress tried another method to subsidize improvement of the navigation of the Tennessee River and a number of smaller streams. On May 23, 1828, it authorized the conveyance to the State of Alabama of 400,000 acres of relinquished land in six counties in the northwestern corner of the state, along which the Tennessee River flowed, for the improvement of the navigation of Muscle Shoals and Colbert's Shoals. The shoals were said to obstruct navigation of the Tennessee for a distance of 30 miles, though both below and above it steamboats could proceed without trouble; a canal, or removal of the obstructions, seemed called for and Congress voted overwhelmingly in favor of the measure. The relinquished lands were parts of larger tracts which had been purchased for speculation before the Panic of 1819 and later relinquished. Presumably the lands were attractive, being both near the river and promising for cotton growing, but they had not found new purchasers because of the depression and the almost complete cessation of speculative purchasing for a time. In the event that 400,000 acres of relinquished land were not found, the state was authorized to enter any unappropriated land in Jackson County to make up the deficit. Work on the river was to begin at the lowest point of obstruction. The Army Engineers were to survey and report the nature of the improvements to be made. Like the other internal improvements fostered at this time by state and national governments, the Muscle Shoals project was to be planned and possibly directed by the Army Engineers, and financed by a Federal land grant while the state was to do the work of construction and manage the sale of the lands at prices not below the government minimum.[34]

To secure the entire 400,000 acres, Alabama was obliged to take some land of inferior quality. The lands were offered for sale

1854, Congress authorized the state to select from the remaining public lands held at $1.25 an acre this amount in lieu of what it had lost. In 1854 the 32,895 acres had been selected and 27,707 acres had been approved, the balance was held in abeyance because of conflicts. These are included in the 290,915 acres mentioned above. *S. Ex. Doc.*, 34th Cong., 1st sess., Vol. I, No. 1 (Serial No. 810), p. 146. Krenkel, *Illinois Internal Improvements*, and James W. Putnam, *Illinois and Michigan Canal* ("Chicago Historical Society's Collection," Vol. X [Chicago, 1918]), are useful on the canal.

[34] *Register of Debates*, 20th Cong., 1st sess., May 19, 21, 1828, pp. 2733, 2744; 4 Stat. 290. As early as 1825 the Army Engineers had investigated the area around the Shoals, the possible water power available as part of the effort to locate a national armory in or near Florence, Ala., on the Tennessee. In the Engineers' report for 1825 it is stated that the United States had reserved a tract 7 miles square, 25 miles from Florence, containing an excellent quality of iron ore promising for forging. *American State Papers, Military Affairs*, II, 732.

in 1829 on credit extending up to 4 years, in contrast to the Federal government's cash sale policy. Land near the river which would be benefited by the improvement of navigation was quickly grabbed up. For some years the remaining 77,000 acres found no market at $1.25 an acre. A House Committee report doubted that the lands would ever sell for that price and recommended that Alabama be permitted to sell them for what they would bring; otherwise, the improvement could not be completed. In a quickly adopted and rare measure Congress responded by repealing the section requiring sales at not less than $1.25 an acre, permitting them to be sold at any price.[35] Construction of the canal around the shoals began in 1831 and was sufficiently completed by 1836 to permit boat passage. Unfortunately, insufficient care had been given to the planning and only in high water could boats approach the canal, which proved a failure. A half-century later new surveys were made, a new canal was built and opened to traffic in 1890.[36]

Grant for Rock River Canal

In summarizing the achievements of the National Republican administration of John Quincy Adams, it is clear that the Federal government, through generous appropriations, subscriptions to the stock of private companies, and liberal grants of land to the states had stimulated an extensive program of internal improvements. Not a state had failed to receive aid for harbor improvements, dredging rivers, or building canals. Some of the projects were not to be completed or undertaken for as many as 20 years. Later administrations which had a more conservative outlook on the use of Federal powers—while they could prevent additional appropriations and grants for internal improvements being made—could not turn back the clock for those already authorized. Some of the projects were ill-planned, others were inadequately financed and had to wait almost too long for completion. The railroad era had arrived before some canals were completed, but all had contributed largely to the growth of the areas they served, had accelerated the shift from near subsistence to commercial agriculture, and had aided the development of rapidly growing commercial centers.[37]

Whether from sincere conviction or political circumstances, Jackson could not continue in Adams' brand of nationalism. Federal aid to internal improvements was reduced, though by no means ended. In addition to appropriations for the extension of the National Road through Ohio, Indiana, and Illinois and for the construction of other roads, Jackson approved an act to authorize a survey of a route for a canal in West Florida and to donate a right-of-way and an additional 90 feet on each side of the canal, and to reserve every section of land through which the canal was to pass. On March 3, 1835, he approved an act granting a right-of-way plus 30 feet on each side for a number of railroads in Florida, reserving for 2 years all sections and fractional sections over which the projected railroads were to pass.[38]

The continuous flow of petitions asking for donations for canals, and later railroads, indicated that the Democrats would find it increasingly difficult to remain faithful to the principles Jackson or Taney had enunciated in the veto of the Maysville Turnpike bill.

The next breach in the policy to which Jackson may have thought he had committed his party came on June 18, 1838, when Van Buren signed a measure granting to an incorporated company the odd sections for a

[35] *S. Doc.*, 23d Cong., 1st sess., Vol. II, No. 84, 1834 (Serial No. 239); *House Reports*, 24th Cong., 1st sess., Vol. II, No. 505, 1836 (Serial No. 294).

[36] *Alabama, A Guide to the Deep South*, "American Guide Series" (New York, 1941), pp. 90–91.

[37] Scheiber, "Internal Improvements and Economic Change in Ohio," *passim*, and John Bell Rae, "Federal Land Grants in Aid of Canals," *Journal of Economic History*, IV (November 1944), 167 ff.

[38] 4 Stat. 474, 778, and 5 Stat. 145.

distance of 5 miles on each side of a route for a proposed canal to connect Lake Michigan at Milwaukee with the headquarters of the Rock River which flows southwesterly, emptying into the Mississippi at Rock Island. Of all the proposed canals for which land was given it had the least justification. David Petrikin of Pennsylvania brought this out on the floor of the House charging, with an abundance of justification as subsequent study has shown, that the canal was being projected by a group of speculators who had bought the best sites along the route, that they had organized a private company to receive the grant because the territory lacked money with which to build the canal, and that the sole purpose of the project was to enhance the value of their lands and contribute to the growth of Milwaukee in which they had large investments.[39] It was badly planned and inadequately supported in Wisconsin, and only one mile of canal and a power dam were to be constructed.

Undoubtedly the grant did much to draw attention to Milwaukee but it was to be a nuisance for years to all settlers anxious to develop its land. This was the first act which specifically named the odd sections as those to be granted, and required that both the canal lands and the government-reserved sections within the 10-mile strip should be sold at not less than $2.50 an acre, but the measure continued the indefinite language of the Wabash and Lake Erie grant, not indicating precisely where it was to begin and to end. This grant established two basic features of the policy that was to be followed, with few exceptions, in grants for canals and railroad: alternate sections granted, the others reserved for sale like the granted lands at double the minimum price. Unfortunately, the high price for which the lands were held repelled settlers, squatters on the lands were denied preemption rights, taxes could not be collected on the canal lands and local governments suffered from lack of a tax base. In the Wisconsin Admission Act of March 3, 1847, by which time it was clear that no canal would be built, the reserved sections were ordered into market to be sold at the regular minimum price of $1.25 an acre and preemption rights were to be recognized. Persons who had paid $2.50 an acre for the even sections were to be given assignable land scrip to the amount of the acreage they had bought, thereby reducing their cost to $1.25 an acre. The state was to repay the government for the land the canal company had sold, deducting therefrom the expenditures of the company and of the territory for administrative costs and for such construction work as had been done. In summary, Congress had blindly rushed into a speculative scheme which left many problems, dissatisfied settlers, and created sharp controversies over the final settlement of the 124,431-acre grant.[40]

For a time after the panic of 1837 canals, railroads, and waterways received less attention because people were too much troubled by the huge burden of debt their states had so eagerly incurred in the thirties in order to obtain these facilities. Suspensions of interest payments on obligations, defaults and partial repudiation followed upon each other. In such circumstances there was no capital for new enterprises and precious little to complete those already undertaken. It was not until after 1845 that the economy began to revive, older projects were carried to completion, and some new undertakings begun.[41]

[39] *Cong. Globe*, 25th Cong., 2d sess., June 5, 1838, pp. 428–29 and 438 ff.; 5 Stat. 245.

[40] 9 Stat. 178, 233; 13 Stat. 413; Joseph Schafer, "Memorials of John H. Tweedy," *Wisconsin Magazine of History*, VIII (March 1925), 355–57. Most useful on Wisconsin politics for this period is Alice Elizabeth Smith, *James Duane Doty. Frontier Promoter* (Madison, Wis., 1954).

[41] Reginald C. McGrane has told the story of the letdown in construction of internal improvements following 1838 and 1839 and the difficulty of the states in carrying their debts in *Foreign Bondholders and American State Debts* (New York, 1935).

Grants in Iowa and Lake States

By 1846 two new projects had gained sufficient support to win the approval of Congress and to receive land grants, one for Wisconsin and one for Iowa. Wisconsin politicians were not content with their grant for the construction of a canal to connect Lake Michigan with the Mississippi River by way of the Rock River. They induced Congress to consider a land grant for a canal to connect the waters of the Fox River flowing into Green Bay with those of the Wisconsin flowing into the Mississippi. Both Senate and House Committees on Public Lands reported favorably, envisioning steamboats ascending well up the Wisconsin, except in low water, and imaginatively describing a "remarkable" divide or portage between the Wisconsin and the Fox with water sometimes 3 feet deep flowing from the Wisconsin to the Fox. The cost of the canal, estimated at $550,000, could be met, the committee reported, by a grant of alternate sections for 2 miles on each side. The first tier should be sold at $2.50 an acre, the second tier at $1.25 an acre, and the government-reserved sections should be sold at $2.50. The grant would include 320,000 acres and should produce $600,000. Congress responded by granting to Wisconsin when it was admitted to statehood one half the land in alternate sections for a distance of 3 miles from the route of the canal on each side, without naming either odd or even sections. Reserved sections were to be sold at a minimum of $2.50 an acre but the state was permitted to sell its land at any price not less than $1.25 an acre. It was well known in Wisconsin that landseekers would not buy the government-reserved lands at $2.50 when not far away other lands were available at $1.25. Hence the constitutional convention, in bargaining with the Federal government on terms for admission, succeeded in inducing the latter to lower the minimum price on those lands to $1.25. Congress was more definite than it had been in earlier measures in determining the limits of the grant and in stipulating that land sales should only be made as construction advanced.[42]

Construction now was pressed forward but soon the plans proved defective. Locks were built too high, a dam was improperly constructed and was soon breached, other repairs and replacements were necessary, and most distressing, the Wisconsin River proved to be unnavigable by steamboats except in high water season because of many shifting sandbars. Also, original estimates of construction costs proved too low. Meantime, the property of the canal was incorporated into the Fox and Wisconsin Improvement Company which soon passed into the control of a group of New York capitalists who were also in control of the Half-breed Lands in Iowa and who built the St. Mary's Falls Ship Canal (the Soo) and acquired control of its rich land endowment.[43] Included in this group of capitalists and politicians were Erastus Corning, iron manufacturer, railroad promoter, and president of the New York Central Railroad, and other powerful figures. They succeeded in getting Congress to reinterpret the land grant of 1846 so as to allow the grant to be determined by the total distance of the right-of-way, including all twists and turns, rather than by a straight line. This brought the canal an additional 150,000 acres. Next they asked Congress to grant the same acreage per mile that other canals had received.

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[42] *House Reports*, 29th Cong., 1st sess., Vol. 3, No. 551 (Serial No. 490), includes both the Report of the House Committee on Public Lands of April 6, 1846, and the Report of the Senate Committee on Public Lands of Jan. 8, 1844, on the Fox and Wisconsin project; Act of Aug. 8, 1846, 9 Stat. 83. Mention should at least be made of the Act of June 15, 1844, in which the United States gave to the Territory of Wisconsin a section of land for the improvement of Grant River, near Potosi, a lead mining community in Grant County. The land was to be surveyed into lots and appraised without regard to the improvements on them and sold to the occupants. 5 Stat. 663.

[43] Irene Neu tells the story of the St. Mary's Falls Ship Canal Company and its lands in "The Building of the Sault Canal: 1852–1855," *Mississippi Valley Historical Review* XL (June 1953), 25 ff.

Their request was acceded to, further increasing the grant by 268,310 acres. Finally, they sought to have the grant extended down the Wisconsin River to the Mississippi, which would have doubled it. Here they were unsuccessful.[44]

Wisconsin had failed to link up Lake Michigan with either the Rock or the Wisconsin Rivers, as planned, though Congress had generously donated 820,000 acres for the two projects.

The state was not through with canals, however. On April 10, 1866, Congress was induced to give Wisconsin 200,000 acres for a canal across the Door Peninsula. Alternate odd sections nearest the canal and Sturgeon Bay were to be selected. Altogether 1,022,348 acres were given Wisconsin for canals and river improvements, plus the 500,000-acre grant given states after 1841 for internal improvements. The latter was not used for the purpose for which it was granted but was assigned to public schools.[44a]

A second river improvement grant was given in 1846 to the Territory of Iowa for improving the navigation of the Des Moines River "from its Mouth to the Raccoon Fork. . . ." By failing to make clear what tributary was the Raccoon Fork Congress opened up a host of controversies that remained unsettled and led to complicated and expensive litigation lasting half a century. Alternate sections of land for a distance of 5 miles on each side of the river were granted. For obvious reasons—principally because the school section, 16, would reduce the number of acres if even sections were selected—the state elected to take the odd sections.[45]

Congress made a third river improvement grant in 1868 proposed by Ignatius Donnelly of Minnesota, which was based more on the plan for the improvement of the Muscle Shoals in the Tennessee River than on the plan for the improvement of the Des Moines River. In an Act of July 23, 1868, it granted to Minnesota 200,000 acres of odd numbered sections to aid in constructing a lock and dam on the Mississippi River at Meeker's Island between St. Paul and Minneapolis. Selections of land were confined to one section in any township but, except for mineral land and tracts on which preemption or homestead claims had been established or railroad lands, any government land was available to the state. The construction work was to be done under the Corps of Engineers of the Army. Unlike the railroad land grants the act provided that if the work was not completed 2 years from the date of acceptance "and disposition of this grant by the legislature" of Minnesota "the lands hereby granted shall revert to the United States." Had this clause been included in the railroad grants it might have avoided the long lasting difficulties over the unearned grants. No work was done on the project and the land reverted to the United States.[45a]

Three land grants were given to Michigan for the building of canals, one from Lake Superior to Lake Huron, one across the Keweenaw Peninsula by way of Portage Lake, and one from Lac La Belle to Lake Superior. The first, consisting of 750,000 acres, was transferred to the St. Mary's Falls Ship Canal Company which built the canal between 1852 and 1855. Because of the short-

[44] The Act of Aug. 3, 1854, allowed the state to select lieu lands for those sections it had failed to secure, from lands held at the minimum price elsewhere in Wisconsin, and applied the formula for determining mileage of the canal and hence the acreage to which it was entitled on the basis of the formula worked out for the Wabash and Erie Canal in 1848. 10 Stat. 345, 724. Joseph Schafer, *The Winnebago-Horicon Basin. A Type Study in Western History* (Madison, Wis., 1937), pp. 112–13. Schafer has shown how the New York capitalists used the promise of land fees to lobby the two measures enlarging the grant through Congress, pp. 188 ff.

[44a] 14 Stat. 30.

[45] 9 Stat. 77.

[45a] 15 Stat. 169; William Watts Folwell, *History of Minnesota* (4 vols., St. Paul, 1926), III, 325–26; Samuel Trask Dana, John H. Allison, and Russell N. Cunningham, *Minnesota Lands* (Washington, 1960), pp. 99, 416.

ness of the canal, 5,674 feet, a grant on alternate sections was not practicable. Consequently, the state was permitted to locate the grant on any lands subject to private entry, whether mineral or nonmineral. As subsequent events were to show, the lands selected ranged all the way from not very good farmland to good timberland and to lands containing one of the world's richest copper deposits. To the other two canals were granted 500,000 acres in three acts, making a total of 1,250,000 acres given the state for canal construction in addition to 500,000 acres for "internal improvements" under the 1841 Act.[46]

Before the canal era had passed (and who can say that it has ever passed with the modern Soo Canal carrying more traffic than the Panama and the Suez together), Congress had granted 6,303,749 acres of public lands for canals and for river improvements in addition to large sums to subscribe to the stock of companies chartered to build them.

SUMMARY OF LAND GRANTS FOR CANALS, RIVER IMPROVEMENTS, AND ROADS[a]

State	Canals and River Improvements	Roads
	Acres	
Illinois	324,283	
Indiana	1,480,409	170,580
Iowa	321,342	
Michigan	1,251,236	221,013
Minnesota	200,000[b]	
New Mexico	100,000	
Ohio	1,204,114	80,774
Oregon		2,583,890
Wisconsin	1,022,349	302,931

[a] *Public Land Statistics, 1964*, pp. 8–9.
[b] Forfeited.

[46] Of the 400,000 acres given for the Portage Lake Canal, 200,000 acres were to be selected from the alternate odd sections nearest the canal, 150,000 from odd sections and 50,000 acres from even sections in the Upper Peninsula. Acts of Aug. 26, 1852, March 3, 1865, and July 3, 1866, 10 Stat. 35; 13 Stat. 519; and 14 Stat. 80, 81; Neu, "The Building of the Sault Canal," *passim.*

Enter the Railroads

During and after the Civil War Congress revived the making of grants for wagon roads for military and post purposes; Wisconsin, Michigan, and Oregon were the beneficiaries. For such roads, alternate odd numbered sections of land on each side of the road for a distance of 3 miles were granted and lieu lands, where necessary, to be selected within 6, 10, and in one case 15 miles from the route.[47]

By the mid-19th century, although roads and canals were still being projected in the more remote areas, the West was demanding railroads, exhibiting a remarkable confidence in their potential for economic progress. Capital from the East and from Europe was being invested in railroads in the rapidly growing parts of the West to an extent that far exceeded the investment in internal improvements in the 1830's. New lines were being planned to Indianapolis, Cincinnati, St. Louis, and most of all to Chicago and from that city to the Mississippi at Rock Island, Dubuque, Burlington, and Quincy. The map of railroad mileage for 1860 shows eight railroads stretching out west of the Mississippi toward the Missouri at Kansas City, Council Bluffs, or some other spot with one, the Hannibal and St. Joseph, already completed and operating. The north–south mileage, however, was small.[48]

[47] So far as wagon roads are concerned this study is solely concerned with the use of land grants to aid in their construction. For Federal construction of wagon roads see W. Turrentine Jackson, *Wagon Roads West: A Study of Federal Road Surveys and Construction in the Trans-Mississippi West, 1846–1869* (Berkeley, Calif., 1952), *passim.* The land grants for wagon roads are summarized in Donaldson, *The Public Domain*, p. 260. Also see Jerry A. O'Callaghan, "Klamath Indians and the Oregon Wagon Road Grant, 1864–1938." *Oregon Historical Quarterly*, 53 (March 1952), 23 ff.

[48] Leland H. Jenks, *The Migration of British Capital to 1870* (New York, 1927), has scattered bits on British investments in American railroads. A de-

RAILROAD MILEAGE IN PUBLIC LAND STATES[a]

Year	Upper Mississippi Valley	Southwest	Pacific
1840	89	80	
1845	374	128	
1850	1,276	280	
1855	4,567	836	8
1860	11,064	2,380	23

[a] Compiled from Henry V. Poor, *Manual of the Railroads of the United States 1867–1868*, pp. 20–21. For somewhat different statistics see F. L. Paxson, "The Railroads of the 'Old Northwest' before the Civil War," *Transactions*, Wisconsin Academy of Science, Arts and Letters, XVII, Part 1, 268 ff.; and *Hunt's Merchants' Magazine*, XXV (September 1851), 380–82.

Congress had been granting railroads rights-of-way through the public lands since 1835—the width ranged from 60 to 100 feet—and in 1852 it adopted a general law giving 100-foot rights-of-way and authorizing companies to use earth, stone, and timber from adjacent public lands and to have additional land for depots and water tanks.[49]

In 1850 Stephen A. Douglas and John Wentworth succeeded in pushing through Congress a measure providing a grant of land in addition to a right-of-way for a projected railroad. It was the first such measure, if we exclude the action of Congress in 1833 to allow the use of the previous grant of land for a canal to connect Lake Michigan with the Mississippi for railroads. Bills to grant land to numerous proposed lines had been under consideration for years but had gotten nowhere. The Douglas measure was originally a bill to aid in building a central Illinois railroad from Galena in the northwestern corner to Cairo at the southern tip of the state. It took on an interstate character when the proposal was enlarged to extend the railroad from Dubuque, Iowa, and Chicago to Mobile, Alabama. It encountered the usual opposition from Representatives of the older southern states and from many of those from the Middle Atlantic and New England States. They saw little benefit for their regions from a north–south railroad more or less parallel to the Mississippi River and they feared, rightly as time was to show, that Douglas's bill, if adopted, would lead to numerous similar requests from other public land states. In fact, Senator Andrew Butler of South Carolina asked Douglas how many similar bills providing land grants for railroads were under consideration by the Senate Committee on Public Lands.[50] Douglas replied that several bills had been presented for consideration—one for grants to Minnesota railroads, he had introduced. Actually, 23 bills providing for land grants to railroads in every public land state were introduced in the Senate in the 31st Congress, 1st session.

The Chicago and Mobile Act, as signed by President Fillmore, granted Illinois, Mississippi, and Alabama a right-of-way for a railroad through central Illinois from Dunleith, via Galena to Cairo with a branch from Chicago, thence across Mississippi and Alabama to Mobile, on the Gulf. The grant was for a 100-foot right-of-way, together with one half the land in even numbered sections within 6 miles of the line. The even numbered sections within 6 miles of the line were given to help finance the road.

It was smart political maneuvering that brought to success the act to aid the "construction of a railroad from Chicago to Mobile," but historians have considered it

tailed analysis of the investments of European capitalists in all American railroads in the 19th century is being prepared by Harry Pierce and should be out before long. The most detailed maps of railroads as of 1860 are in George Rogers Taylor and Irene D. Neu, *The American Railroad Network, 1861–1890* (Cambridge, Mass., 1956).

[49] Lewis H. Haney, *Congressional History of Railways in the United States to 1850* ("Bulletin of the University of Wisconsin," No. 211, Madison, Wis., 1903), pp. 334 ff.

[50] *Cong. Globe*, 31st Cong., 1st sess., April 29, 1850, pp. 844–45.

too much in a vacuum instead of as a continuation and indeed an expansion of a policy that Congress had been pursuing since 1827 when it first granted land to Illinois and Indiana for canals.[51] There is a fairly straight line of development from the first of these canal grants in 1827 to the railroad grants, as Douglas pointed out in 1850.[52] The lands to be granted in Illinois had been subject to sale for 23 years on the average and had not found purchasers. Douglas used an argument which misled most contemporaries and most subsequent writers, by maintaining that if one half the land within a strip extending 6 miles on each side of the road were given for construction and the other half of the land were raised 100 percent in price, the government would lose nothing. Since some sections and quarter-sections within the 6-mile primary grant area had already been sold, particularly in the vicinity of the Illinois and Michigan Canal, Douglas proposed to create an indemnity area (the lieu land area) 6 to 15 miles from the road on each side where lands could be selected by the railroad in lieu of those lost in the primary area.[53] Had the double-minimum price been applied to the government-reserved sections within the indemnity area Douglas might have been right. But this was not required by the Act of 1850 or any later measure, and neither Douglas nor any later defenders of his theory have mentioned the fact that much of the land the Illinois Central Railroad received was in the 6- to 15-mile indemnity area and it naturally followed that such land as the government had left was also mostly within the indemnity area and was to be sold at $1.25 an acre. After 1853 Congress made an interesting change whereby the states, and later railroads, were to receive odd numbered sections, instead of even numbered sections within the primary grant. This avoided for the railroads the loss of section 16 in states admitted before 1850 and sections 16 and 36 for states admitted after 1850. There was one exception to this, for the grant of August 11, 1856, to Mississippi reverted back to even sections, but thereafter only odd sections were granted. This change further assured that the government could not recover from the double-minimum the equal of what it might have gotten from the sale of all the land.[54]

Isaac Walker, Senator from Wisconsin, best known for his advocacy of free land to actual settlers, took vigorous exception to the double-minimum price required for the sale

[51] John Bell Sanborn, *Congressional Grants of Land in Aid of Railways* ("Bulletin of the University of Wisconsin" No. 30, Madison, Wis., 1899), reflects this unawareness of the background of the alternate-section grant and double-minimum price for reserved lands. Later writers followed Sanborn's treatment.

[52] *Cong. Globe*, 31st Cong., 1st sess., April 29, 1850, p. 845.

[53] As provided in the Illinois Central-Chicago and Mobile grant indemnity lands were to be selected from lands "most contiguous to the tier of sections" that were lost to the railroad. Section 2 of the Act of Sept. 20, 1850.

[54] A glance at *Sectional Maps Showing the Location of Over 2,500,000 Acres Selected Farming and Wood Lands in the State of Illinois* (Chicago, 1867) illustrates this for there were large areas in which the railroad received no land within the 6-mile limit, some, indeed in which it found no indemnity land. Later when land grants were under attack by the West and when the movement for their forfeiture was under way, and still later when the railroads were trying to free themselves of the land grant rates, they argued that lands donated before construction were worth little and that the government received more than lands would have brought without the building of the railroads. Neither with respect to the Illinois Central grant nor any other grant made later was there any prospect of the government's recovering from the reserved lands now raised to the double-minimum the amount it might have received had it not given one-half the land away. I have shown the fallacies in the argument concerning the double-minimum in "The Railroad Land-Grant Legend," *Journal of Economic History*, XIV (Spring 1954), 143–46. Though professional historians have long known better, the Association of American Railroads at this late time still persists in the notion that the government recovered from the reserve sections the full $1.25 an acre for the granted lands by the double-minimum price for its sections, though there is not a scintilla of evidence in behalf of the hoary old myth. See its brochure of 1968: *The Case of the Vanishing Passenger Train.*

of both government and railroad lands within the primary grant area. Walker had in mind the bitter experience of residents along the line of the Milwaukee and Rock River Canal route in his state, who had refused to buy either the granted or the reserved sections because of the 100 percent increase in price. He declared that the double-minimum price would in effect make the settlers who purchased the land pay for the cost of constructing the railroad. "You ought not to tax [the settlers] to make this great thoroughfare" he declared, and moved to strike the double-minimum price from the bill. Douglas, himself an advocate of free lands, in rebuttal to Walker, held that the double-minimum was no tax for the value of the land was much enhanced by construction. Walker's move was then defeated.[55] With considerable aid from the Northeast (where support was gained as investors came to assess the benefits railroad construction in the West might bring), this first important railroad land grant measure was then passed.[56]

Scramble for Grants

The State of Illinois, being barred by its constitution from building the railroad, turned the right-of-way, land grant, and a liberal charter over to a group of New York and Boston capitalists incorporated as the Illinois Central Railroad; Mississippi and Alabama conveyed their rights to the Mobile and Ohio Railroad. Solid capital backing enabled the Illinois Central to complete its 700 miles in 1856. Early sales of its lands, amounting to 1,200,232 acres for $14,211,854 by 1857, and a growing volume of traffic, despite the fact that much of its mileage was built through relatively undeveloped territory, seemed to make the company a spectacularly successful venture. True, pressing short-term loans after the Panic of 1857 forced it to assign all property to trustees and to suspend payments for a short time, but with the exception of this brief period of stress the company was a financial success, recovering from its lands the full cost of construction. Its achievement stimulated other groups to seek the same land bounty for enterprises they were promoting.[57] There was thus set in motion a grand scramble for land grants to states to aid them, or the companies to which they might turn over the grants, in building railroads.

The Mobile and Ohio Railroad was somewhat slower to select its land; it ran afoul of the Land Office in its efforts to find compensation for the Chickasaw allotments within the primary grant, and for that part of the line which it was required to build in Kentucky and Tennessee where there were no public lands. The Land Office held that the Chickasaw allotments were not public lands at the time of the adoption of the grant and therefore lieu lands could not be selected in their place, but it was overruled by the Attorney General. As for compensation for the mileage in Kentucky and Tennessee, Senators Douglas, John Bell, and William King, who had been influential in pushing the grant through Congress, declared that Congress had intended to have the grant apply to the mileage in these two states. Attorney General Crittenden, when asked to pass upon the question, held that the Mobile and Ohio was required to build through the two landless states but that the act stipulated no grant for that mileage. Although this left the railroad to build costly mileage (164 miles) for which it would receive no aid from the government, its situation was not altogether unique. Probably no railroad, with the possible exception of the Burlington in Nebraska, received all the land which its mileage called for and some received very

[55] *Cong. Globe*, 31st Cong., 1st sess., April 29, 1850, pp. 852–53.

[56] Act of Sept. 20, 1850, 9 Stat. 466.

[57] Howard Gray Brownson, *History of the Illinois Central Railroad to 1870* (University of Illinois "Studies in the Social Sciences," Vol. IV, No. 3 [Urbana, Ill., 1915]); Gates, *The Illinois Central Railroad and its Colonization Work* (Cambridge, Mass., 1934), *passim*.

little indeed. One railroad, the Missouri River, Fort Scott and Gulf, received so little in relation to the obligations it assumed in land grant rates that, as is discussed later in this chapter, it urged the forfeiture of its grant. There is no evidence that the Mobile and Ohio valued its land grant this lightly. Yet, it did assume large obligations for the amount of land it received as shown by the fact that it obtained an average of 2,346 acres for each mile of road whereas the Illinois Central received an average of 3,652 acres to the mile.[58]

Although George W. Jones of Tennessee and Andrew Butler of South Carolina inveighed against land grants for railroads, holding them to be beyond the power of Congress to convey, they were a generation behind public sentiment. Enlightened self-interest was replacing the fear of change voiced by such southern conservatives. The success of both the Illinois Central and the Mobile and Ohio, a north–south railroad, in financing their lines with the aid of Federal land grants paved the way for numerous later requests for Federal aid to railroads. In 1852 and 1853 two additional land grant measures were enacted giving to the State of Missouri a similar grant—even numbered sections for 6 miles on either side, with lieu land provisions for an indemnity area from 6 to 15 miles from the line—for the building of railroads from Hannibal to St. Joseph and from St. Louis to a point on the western border of Missouri, to be selected by the state, and a grant to Missouri and Arkansas for a line from opposite Cairo by way of Little Rock to Fort Smith. Instead of allotting the first of these grants for a railroad from St. Louis to Kansas City, (later the Missouri Pacific main line) along which very little public land remained, Missouri assigned it to a railroad to run southwest from St. Louis where it would find a far greater amount of land within both primary and lieu areas. The General Land Office accepted this change, if change it was, since it came within the scope of the law and the maps of survey had not been received for the main line. Thereafter, however, the Land Office was not to accept any material change of route once the maps of location had been filed. Only minor deflections made necessary by natural obstacles would be permitted.[59] The land grants of 1852 and 1853 added 1,322 miles to the 1,333 miles of land grant railroads already projected and 4,400,576 acres to the 3,751,788 acres already granted for railroads.[60]

Politics and the Views of Pierce

In discussion of the adoption of the 1852 measure, Timothy Jenkins of upstate New York advanced all the negative arguments that had been voiced since 1827 and included a table showing the mileage of railroads which Congress was being asked to aid and the acreage these measures would take from the public domain. It may be useful to include this table, though if anything it was an underestimate of measures under consideration at the time.

The brief lull that followed the legislation of 1852 and 1853 may be attributed partly to concentration upon other issues, notably the Kansas Struggle, but more to the fact that Franklin Pierce, unlike his immediate predecessors, looked more dubiously on land grants and wanted no "reckless or indiscriminate extension" of them.[61] In his veto messages of

[58] John B. Rae. "The Development of Railway Land Subsidy Policy in the United States" (Ph.D. dissertation, Brown University, 1936), p. 15.

[59] Rae, "Railway Land Subsidy Policy," pp. 18–19.

[60] Included in the latter figure is a considerable acreage resulting from the enlargement of the grant of the Act of 1853 by the Act of 1866 from 6 to 10 sections to the mile. I have not been able to segregate the acreages of the acts. For construction of railroads in Missouri from 1852 to 1870, together with maps showing construction by years, see Gates, "The Railroads of Missouri, 1850–1870," *Missouri Historical Review*, XXVI (January 1932), 126 ff.

[61] James D. Richardson, *Messages and Papers of the Presidents*, V, 217.

PROPOSALS BEFORE CONGRESS FOR LAND GRANTS TO RAILROADS[a]

States	Length of Lines	Acreage Proposed
Michigan	534	341,760
Wisconsin	156	599,040
Iowa	434	3,107,417
Missouri	232	890,880
Arkansas	488	1,873,920
Alabama	314	1,205,760
Florida	932	5,882,880
Total	3,090	13,901,657

[a] *Appendix to Congressional Globe*, 32d Cong., 1st sess., April 14, 1852, p. 428.

bills to grant land to the states for institutions to care for the insane or to appropriate money for river and harbor improvements, Pierce expounded the nature of the Constitution, the powers of the Federal government, its limitations and restrictions.[62] In his second annual message he urged caution in furthering railroad expansion through grants of land, questioned whether it was not best to leave all such construction to private enterprise, and praised Congress for not adopting the many proposals then under consideration for land grants to aid the building of 5,000 miles of railroad at the expense of 20 million acres of public domain. He reminded Congress that he had ordered restored to entry 30 million acres which the Commissioner of the General Land Office had withdrawn in the expectation that bills making grants for this large mileage would be enacted. Pierce returned to the nature of the powers of the Federal government in his third annual message. He believed the Missouri Compromise with its ban on additional slave states north of 36°30′ was unconstitutional, anticipating the Dred Scott decision by 2 years. He was pleased with its repeal and upheld his Kansas policy. He followed this with five veto messages striking down appropriations for the improvements of the mouth of the Mississippi River, the Des Moines River, the St. Clair River, the St. Mary's River, and the port of Baltimore.[63]

In the light of all the rhetoric Pierce loosed upon advocates of using Federal powers to aid the growth and economic development of the West, how was it possible for him to sign eight bills granting 19,678,180 acres to eight states for railroads? The answer seems to be that the President was overwhelmed by the demands of members of his own party from Florida, Alabama, Mississippi, Arkansas, Louisiana, Iowa, Wisconsin, Michigan, and Minnesota Territory who were pushing their favorite measures, with little regard for economic feasibility or whether their grants would overlap others that had been given in earlier measures. Two and even three land grant measures were approved by Congress simultaneously, and without division. If Pierce had tried to resist, his administration and his party might have been hurt seriously.[64] Though his conscience must have bothered him, Pierce signed all eight measures, thus approving land grants for railroads far in excess of the acreage granted by his Whig predecessor. Included were grants for four railroads in Florida, seven in Alabama, two in Mississippi, two in Louisiana, and one each in Iowa, Michigan, Wisconsin, and Minnesota. This last was soon repealed. Thomas Donaldson estimated in 1880 that the grants made in the Pierce administration, if fully satisfied, would require 19,678,180 acres as compared with 8,198,593 acres promised in the Fillmore years. To this extent had Pierce allowed political considerations in the public land states to influence him, notwithstanding his rigid constitutional views.

Unlike his predecessor John Wilson,

[62] *Ibid.*, V, 247 ff., 256.

[63] *Ibid.*, V, 290–91, 386–88.

[64] Study of *House Journal*, 34th Cong., 1st Sess., pp. 942, 949, 1018, and the *Senate Journal*, pp. 316, 328, 367 suggested almost a bloc vote that was overwhelming in the Senate, but closer in the House. For the vote on the Iowa measure see Richard C. Overton, *Burlington West. A Colonization History of the Burlington Railroad* (Cambridge, Mass., 1941), pp. 73 ff.

Thomas A. Hendricks, Commissioner of the General Land Office, refused to withdraw lands along the lines of the projected railroads before the land grant measures of 1856–57 had passed both Houses. However, he quickly ordered the withdrawal by telegraph when Congress acted, even before the President had signed the measures. It was later charged that 78 million acres were thus ordered withdrawn; this meant that most of the remaining public lands of Iowa and large portions of those in other states to which grants were made, were for years unavailable to settlers desiring to preempt them or to investors wishing to buy and to anticipate the railroad. Restoration of the withdrawn lands to entry might have followed fairly promptly had not the Panic of 1857 brought to a halt the operation of most of the companies, including the location of their lines and the selection of their lands. By 1858, 18 million acres had been restored, though this was only a small part of the total of withdrawn lands. The question of preemption rights established on lands withdrawn but not yet selected by railroads was generally decided in favor of the settler though he was compelled to pay the double-minimum price if on the government-reserved sections.[65]

Transcontinental Rails

Grants to states for railroads by no means ended at the conclusion of the Pierce administration, although thereafter popular attention was given increasingly to proposals for railroads through the territories to the Pacific. Congress had promised land grants aggregating 27,878,772 acres for 50 railroads whose total length was 8,647 miles. Included were railroad routes extending to the western borders of Louisiana, Arkansas, Missouri, Iowa, and Minnesota, any one of which might serve to connect with a Pacific railroad.[66] Two of these roads were instrumental in completing two transcontinentals.

The promoters of the Rock Island Railroad acquired leadership in the Union Pacific. James J. Hill, after he had acquired the St. Paul and Pacific line in Minnesota, was able to use its grant of 3,272,691 acres to push his Great Northern Railroad westward without further aid in land. The Great Northern has commonly been regarded as a line that was built without Federal aid, but this is not entirely correct. Not only did one of its components, the St. Paul and Pacific, gain one of the largest of the early grants but, because of a strange quirk of law and a Supreme Court decision, in compensation for land it lost in North Dakota, it was permitted to enter 65,000 acres of public land along its line in any state through which it was built, in blocks not larger than 640 acres. The total of its holdings were small compared with the huge grant of the Northern Pacific, its major rival, but it was sufficient to provide credit for a considerable part of the cost of getting the entire line started.[67]

While western members of Congress seem to have been concerned about grants for rail-

[65] Rae, "Railroad Land Subsidy Policy," pp. 33 ff.

[66] *Ibid.*, p. 57. Rae points out that of the grants made in 1856 and 1857, 33 had been located, two had been rejected by states, and 10 in the South had elicited no action so far as the states were concerned.

[67] When Congress made the grant to Minnesota in 1857 it was for a railroad to extend to the western border of the territory which at that time was the Missouri River. The next year when Minnesota was admitted the boundary was changed to the Red River, about 136 miles farther east. Interior officials held that the grant only extended to the Red River and allowed settlers to homestead and preempt land within the primary area between the two rivers. Finally, in 1891 the Supreme Court reversed the decision, declaring that the railroad was entitled to land between the two rivers that was not in Indian reservations at the time of the grant. Since the land the railroad was now entitled to had long since been entered and much of it patented, Congress came to the rescue and allowed the railroad to acquire indemnity land as above indicated. 137 U.S. 628; 16 Stat. 588; John B. Rae, "The Great Northern's Land Grant," *Journal of Economic History*, XII (Spring 1952), 140–45.

roads in their individual states, at the same time they gave considerable attention to aiding railroads to the Pacific. In the thirties and forties, the numerous suggestions of the possibility, indeed probability, that in the near future railroads would be built to the Pacific are surprising, the more so because of the primitive character of railroading at that time.[68] Asa Whitney's plan for the building of a railroad from Milwaukee by way of South Pass to Puget Sound, first broached in 1844, brought the subject under consideration and from then until 1862 interest in the building of a Pacific railroad with Federal aid never subsided. Whitney's proposal included the sale to him for 16 cents an acre of a strip of land 60 miles wide along the entire route which should provide, when resold, the cost of the railroad. Interestingly, Douglas, then in the House, proposed instead that Chicago should be the eastern terminus and San Francisco Bay the western end, and advanced his favorite device of granting lands on the alternate section pattern instead of a solid tract as Whitney proposed.[69]

James Buchanan, although a strict constructionist, did commend to Congress the desirability of a Pacific railroad and seemed to favor both government loans and land grants for it. Disagreement over routes and termini and the growing bitterness over slavery and territorial problems, however, kept Congress from passing any further land grant measures until the Republicans came into power.

Three steps seemed necessary before any actual route for a Pacific railroad could be adopted, a charter granted and a land donation made: first, a careful survey or at least reconnaissance of a possible route or routes through the Rocky Mountains and the Sierra Nevada and Cascade Ranges; second, the removal of the intruded Indians who had been concentrated along the eastern frontier of present Oklahoma, Kansas, and Nebraska; and third, the creation of one or more territories through which a railroad might be projected. All three steps were authorized by Congress in 1853 and 1854 and all three, particularly the creation of Kansas Territory, helped to bring about the sectional crisis that led directly to secession and the Civil War. The Pacific Railroad Survey enabled influential people to have surveys made that favored their political and sectional interests and, indeed in a number of instances, their own land investments.[70] Of the different routes investigated none stood out strongly in the report; the most obvious route, by way of South Pass to San Francisco, was not even included.

Douglas, now the leader of the movement for Pacific railroads, in 1854 introduced a bill to authorize construction of three railroads to extend westward from the western boundary of Texas, the western boundary of either Missouri or Iowa, and the western boundary of Wisconsin. Twelve sections for each mile of road were to be given to aid construction. This and a series of later bills were discussed in great detail but sectional feelings and the rivalry of partisans of different cities anxious to bring the railroads to their particular communities prevented the enactment of any of them. The need for speedy transportation of mails, express, and government supplies to forts and Army posts was great but both Congress and the President were too bogged down in divisive sectionalism and petty politics to meet it.[71]

After secession of the South there still was a

[68] Haney, *Congressional History of Railways in the United States to 1850*, pp. 234 ff.

[69] Robert R. Russel, *Improvement of Communication with the Pacific Coast as an Issue in American Politics, 1783–1864* (Cedar Rapids, Iowa, 1948), pp. 11–13.

[70] This latter point is made clear in both Russell, *Improvement of Communication with the Pacific Coast*, and William H. Goetzmann, *Army Exploration in the American West. 1803–1863* (New Haven, Conn., 1959), pp. 262 ff., esp. 303.

[71] Both Russel, *Improvement of Communication*, and Goetzmann, *Army Explorations* are excellent for the issues that prevented action until 1862.

great deal of pulling and hauling in Congress over routes and termini of the proposed Pacific railroad, though the issues finally were resolved enough at least to permit enactment on July 1, 1862, of the Pacific Railroad Act. Military demands for men and the capital needs of other enterprises, combined with weaknesses in the Act of 1862, delayed action. Congress was urged to liberalize the chartering act, which it did on July 2, 1864.[72] The Union Pacific Railroad, thus chartered, was given a 400-foot right-of-way through the public lands and 10 (20 under Act of 1864) odd numbered sections of land for each mile of railroad it constructed from Omaha on the Missouri River, to the western border of Nevada. The Central Pacific Railroad, a California chartered company, was given the same right-of-way and lands to build to the California border and 150 miles farther if it got there before the Union Pacific. To prevent persons anticipating the railroad in selection of its land, the acts provided that the two companies should locate their routes within 2 years. When informed of the routes, the Secretary of the Interior was to withdraw all lands from entry of any kind for a distance of 15 miles (25 under the Act of 1864) from the line. This meant that a solid area 30—later 50—miles wide extending from Nebraska to California would be withdrawn from all entries, including homestead and preemption, though all such claims established prior to the enactment of the measures, including locations made under the Morrill Act of 1862, were not affected. This was made fairly clear by the words: "And any lands granted by this act . . . shall not defeat or impair any preemption, homestead, swamp land, or other lawful claim. . . ." But in a later proviso to this section the act states that "the quantity thus exempted by the operation of this act . . . shall not exceed one hundred and sixty acres for each settler who claims as an agriculturalist. . . ." Since it was legal for settlers to file both a preemption and a homestead entry totaling 320 acres, though not simultaneously, the two provisions were not in harmony and the second did threaten to deprive settlers of rights they might have established within the 50-mile area before it was selected.[73] The railroads were denied the right to select mineral land, though after a proviso was added permitting iron and coal land to be selected the restriction was not particularly meaningful.

In addition to the broad right-of-way, the land grant, and the right to take timber and stone from public lands, Congress authorized loans of $16,000, $32,000, and $48,000 in 6 percent, 30-year government bonds for each mile to the Union Pacific and Central Pacific Railroads for construction of their lines; the amount depended on the difficulty and cost of construction. In exchange for the loan, the railroads were to give the government a first mortgage on their lines. In the 1864 Act this was changed to second mortgage, thus enabling the railroads to sell their first mortgage bonds as well as the government bonds to finance construction.

According to the Pacific Railroad Act of 1862, five eastern branches of the Pacific railroad were to be built, from Sioux City, Omaha, St. Joseph, Leavenworth, and Kansas City, to converge at some point on the 100th meridian. This was later changed to permit the Union Pacific, Eastern Division, to build from Kansas City due west to Denver and then by way of the Denver Pacific to join with the Union Pacific line at Cheyenne; the other branches were freed of their obligations to converge with the main line on the 100th meridian. To each of these lines was given the same land subsidy of 10 sections (20 sections

[72] 12 Stat. 489 and 13 Stat. 356.

[73] Section 4 of the Act of July 2, 1864. Preemption and homestead entries on even sections within the 50-mile belt were sanctioned in the Act of March 6, 1868. 15 Stat. 39. Robert W. Fogel, *The Union Pacific Railroad; A Case of Premature Enterprise* (Baltimore, Md.); Wallace D. Farnham, "The Pacific Railroad Act of 1862," *Nebraska History* XLIII (Sept. 1962) pp. 141–68.

by the Act of 1864) for each mile of authorized road. Neither the Central Pacific nor the Union Pacific nor any of the latter's branches was given the privilege of selecting lieu land beyond the primary grant area as was allowed in all the state grants of the fifties.

From the outset it seemed likely that the financiers promoting the Rock Island Railroad would gain control of the Union Pacific, as they subsequently did. Such an eventuality was unacceptable to an equally aggressive group promoting the Burlington Railroad, as it is known today. This group succeeded in having added to the Pacific Railroad Act of 1864 an amendment allowing it to extend its line from the Missouri River to the 100th meridian in Nebraska and giving it a 200-foot right-of-way and 20 sections per mile of public lands but not allowing it the bond subsidy the Pacific roads enjoyed. A unique feature of the amendment for the Burlington grant was that it mentioned no lateral limits for the selection of the lands. Since its grant overlapped that of the Union Pacific substantially, which antedated it, and both roads were required to make their selections from the odd numbered sections and clearly had no lieu land possibility, the Burlington would not be able to gain more than one half the land within the 40-mile strip. Either it would lose a considerable portion or it must have the privilege of making selections more than 20 miles from the railroad. At first, the Department of the Interior withdrew land from private entry more than 20 miles from the line to make sure the Burlington would get the amount of land to which it was entitled, but a later Secretary reversed this action. In 1871, a third Secretary of the Interior again reversed his predecessor, declaring that the Burlington was not restricted laterally in selecting its lands. Partly because of the delay in coming to this decision and the desire of the Burlington's officials to concentrate their locations as much as possible on the better and more humid lands of eastern Nebraska, the railroad was forced to go as far as 100 miles from its line to find available land.[74]

Railroad Holdings Mushroom

Provision was made in the Pacific Railroad Act of 1862 that all lands not sold or otherwise disposed of within 3 years after the completion of the road "shall be subject to settlement and preemption, like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company." If these words had any meaning at all it was that the company must sell all the land it received, in the case of the Union and Central Pacific, by 1872 or they would be subject to preemption by any settler on them at $200 for a quarter-section. While this section was a sop to the homestead element, which was troubled at the withdrawal of such large quantities of land from preemption and homestead entries, it lent itself to a very different interpretation because of its vagueness. As the courts were later to hold, railroad companies "disposed of" their lands by placing a blanket mortgage on them, thereby preventing their reversion to the public domain. In other cases, the courts declared that reversion of unearned grants was not automatic for failure to conform to the require-

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[74] John A. Caylor, "The Disposition of the Public Domain in Pierce County, Nebraska" (Ph.D. dissertation, University of Nebraska, 1951) p. 40, found that the Burlington selected over 15,000 acres in Pierce County, next to the northern tier of counties, more than a hundred miles from the line. Richard C. Overton, *Burlington West. A Colonization History of the Burlington Railroad* (Cambridge, Mass., 1941) and his *Burlington Route* (New York, 1965), are indispensable for western railroad history. For a somewhat similar instance where a Wisconsin railroad route was changed but the land grant, already selected, was not changed, thereby making for a "distinct separation between the location of the line and that of its donation" see Rae, "Railway Land Subsidy Policy," pp. 83–84. The new line was shorter than the old by 45 miles and would be entitled to 172,800 acres less but Congress was persuaded in 1869 to allow the company to retain the greater acreage.

ments of the law; only by positive congressional action could such reversion be achieved.[75] Congress might have tried to enforce this provision of the Pacific Railroad Act of 1862 when the public was protesting against the large unsold acreages still in possession of the railroads in the seventies and eighties, but it preferred to resort to forfeiture where railroads had not abided by the provisions of the granting acts. Forfeiture might return unearned grants to the government but would presumably leave untouched the earned but unsold lands.

The homestead-agrarian element could not have foreseen how another provision of the granting act of 1864 would cause them much anguish and almost frenzied political action in the seventies and eighties. This was section 21 which required that the railroads receiving land bounties should pay to the government "the cost of surveying, selecting, and conveying the same . . . as the titles shall be required by said company. . . ." By failing to tender the cost of survey to the government and thus delaying patents, the railroads were able to postpone for many years the assessment of taxes against their land.

In the Pacific Railroad Acts of 1862 and 1864 Congress breached the basic features of its land grant policy, a fact which some historians, in discussing the role of the government in western development, have overlooked. First, it dropped the double-minimum price for the government-reserved sections within the 40-mile strip of land through which the Pacific railroads were to build, leaving the basic price for the reserved sections $1.25 an acre. It is impossible to determine whether this omission was deliberate or whether members of Congress were really aware that the Act of March 3, 1853, to extend preemption rights to settlers on government-reserved lands within the primary grant areas, might be interpreted as requiring for all future as well as past grants that the alternate reserved sections within the primary area be doubled in price. John P. Usher, Secretary of the Interior, declared that the reserved sections, in the absence of specific legislation to the contrary, would be held at $1.25 an acre. Nevertheless, his Commissioner of the General Land Office, Joseph Wilson, and Usher's and Wilson's successors, James Harlan and J. M. Edmunds held to the contrary, and their view prevailed. To settle the matter, Congress on March 6, 1868, definitely established the price at $2.50.[76]

The second breach in the well-established land grant policy of the double-minimum priced land was the action of the General Land Office in allowing the Burlington and Missouri Railroad to select a portion of its land grant in a region far distant from its line and one which would in no way be tributary to it, as has been seen. Great indignation was expressed by the settlers in those counties that received no benefit from the Burlington but had much of the land withdrawn from homestead and ultimately offered at prices comparable to those the speculators charged. Reacting to this indignation, Governor Paddock in 1867 denounced the withdrawal of these remote tracts from homesteading and spoke of "the evil effects of this baleful system of land grants . . . this rapid absorption of the public domain . . . by railroad monopolists and land speculators."[77]

The third breach in the land grant policy was an Act of June 2, 1864, wherein Congress permitted three cross-state railroads in Iowa (which had the usual land grants of the fifties

[75] W. A. McAllister, "A Study of Railroad Land Grant Disposals in California with Reference to the Western Pacific, the Central Pacific and the Southern Pacific Railroad Companies" (Ph.D. dissertation, University of Southern California, 1940), pp. 175–76.

[76] See the summary of the matter in the report of Commissioner J. M. Edmunds, *GLO Annual Report, 1865* in *H. Ex. Doc.*, 39th Cong., 1st sess., Vol. 2, No. 1 (Serial No. 1248), 35–36; 15 Stat. 39.

[77] Addison E. Sheldon, *Land Systems and Land Policies in Nebraska* ("Publications of the Nebraska State Historical Society," Vol. XXII [Lincoln, Neb., 1936]), 90–92; Overton, *Burlington West*, pp. 329–32 and map opposite p. 332 showing the location of the remote lands.

—one half the land within a strip 12 miles wide with the privilege of selecting lieu land 9 miles farther from the road) to select lieu lands to which they were entitled from either or both the odd and even numbered sections between the 15- and 20-mile limits of the road. Furthermore, the act authorized the relocation of the three roads without modifying in any way the locations of the grants.[78]

On July 26, 1866, Congress granted to Kansas 10 odd numbered sections for each mile of railroad to extend from Junction City in a southeasterly direction to the southern boundary of Kansas and allowed it to select lieu lands between 10 and 20 miles from the line without specifying odd sections. Like the Iowa roads, the Kansas road was permitted to select both odd and even sections in the lieu area. In his study of "Kansas and the Homestead Act," Lawrence B. Lee found that in one of the townships in Morris County the Missouri, Kansas and Texas Railroad received part or all of 27 sections—15,440 acres altogether—instead of getting only half of the land in this particular township. Again, Congress had breached the policy of allowing the grantee states or railroads to select only the alternate sections of land.[79]

Later, in 1873, the West Wisconsin Railroad was permitted to select 20,000 acres of odd numbered sections commingled with its even sections to compensate for a quantity of land it had lost because of the delay of the Land Office in ordering the lands withdrawn from entry.[80] With the privilege of selecting land remote from the benefited railroad, the right to select both odd and even sections in certain instances, and to retain the original selections when the route was changed, the relation of construction to the double-minimum price for reserved lands became even more tenuous.

Finally, the Pacific railroads given land by the Acts of 1862 and 1864 were allowed no lieu fringe beyond the primary grant area in which they could locate indemnity lands. These changes suggest that members of Congress were moving away from the notion that a principal justification of land grants for railroads was that, in addition to contributing greatly to the development of the West, the construction of the railroad would enable the government to sell the reserved sections for the double-minimum and thereby recover all that otherwise it would have received from the sale of all the land.[81]

None could deny that Congress had made up in 1862 and 1864, at least in part, for the long delay of the fifties in taking action that would encourage the building of one or more railroads to the Pacific, for in these two acts some 2,720 miles of railroad rights-of-way and 34,560,000 acres of public lands were given away. This was only the beginning, however, for the bars were down. Com-

[78] 13 Stat. 95. There were many cases of settlers who took up land in good faith, improved it, and made applications for entry which were accepted by the local officers, only to be rejected by the General Land Office on the ground that the lands were a part of the railroad grants. Heavy pressure to legalize such erroneous entries and to compensate the railroad with selections elsewhere resulted in numerous bills of a local application and a general Act of June 22, 1874. This latter allowed the railroads to select equal amounts of lands elsewhere within the primary grant, which meant even sections for the railroads receiving grants on or after 1862 and odd numbered sections for roads which received grants earlier. Rae, "Railway Land Subsidy Policy," pp. 69, 153 ff.

[79] 14 Stat. 289; Lee, "Kansas and the Homestead Act" (Ph.D. dissertation, University of Chicago, 1957), pp. 84–86.

[80] Rae, "Railway Land Subsidy Policy," p. 188.

[81] Overton, *Burlington West*, p. 170, first brought out the point that under the Act of June 2, 1864, in lieu of place grants not obtained, both odd and even numbered sections could be selected between the 6- and 20-mile limit and shows that the Burlington in Iowa gained more than 100,000 additional acres as a result of this change. It might be added that the changes above referred to, still further reduced the possibility of the government's gaining any considerable return from reserved lands. See Gates, "The Railroad Land-Grant Legend," *Journal of Economic History*, XIV, 143–46; Rae, "Railway Land Subsidy Policy," p. 68.

munities which had not previously been promised aid for railroads now began actively lobbying for their favorite enterprises which sometimes cut across the demands of lobbyists for other Pacific railroads. The result was a series of laws granting rights-of-way and lands both to corporations and to states. Although the corporation grant was generally used where territories were involved, some grants were given to corporations wholly within a state and others were given to corporations operating within two adjacent states. Grants to states were frequently for the completion of links in an interstate railroad.

Samuel C. Pomeroy, Senator from Kansas, constant promoter of the city of Atchison in which he had major investments, and prototype of Senator Dillworthy in Mark Twain's scornful *Gilded Age*, was highly successful in securing railroads for his home town through land grants and government loans. For a time he made his community the most promising on the Missouri. The Atchison and Pikes Peak Railroad, later the Union Pacific, Central Branch, and still later a part of the Missouri Pacific system, received a Federal loan of $16,000 a mile for its construction to the 100th meridian, and a land grant that it interpreted to be 1,280,000 acres but which dwindled to 223,141 acres when Pomeroy's influence ended. Finally, it won over rival groups the right to buy the unallotted lands in the Kickapoo reserve amounting to 123,832 acres at $1.25 an acre.[82] For the Atchison and Nebraska Railroad—today a part of the Missouri Pacific lines—county bond aid to the amount of $700,000 and 12,841 acres of the Nebraska internal improvement lands were secured. The third railroad which Pomeroy brought to his hometown was the Atchison, Topeka and Santa Fe. County bond aid for $950,000 was obtained for it. In Kansas, the 340,180-acre Potawatomi reserve was secured for $1 an acre (which in 5 years had returned $646,784 with the remaining portion valued at $507,366). Pomeroy's greatest triumph came in 1864 when he obtained for the Santa Fe from Atchison to the western border of Kansas a land grant of alternate sections for a depth on both sides of 10 miles with the privilege of lieu selection up to 20 miles from the road.[83]

The Santa Fe Railroad, not having the benefit of the Act of 1864, which doubled the grants per mile from 10 sections to 20 for the Union Pacific, the Burlington in Nebraska, and the Kansas Pacific in Kansas, had to be content with its 10 sections per mile. Since public lands in the eastern third of Kansas had been sold or otherwise disposed of by the time the railroads were able to select their lands, both the Santa Fe and the Kansas Pacific lost land that would have brought them the largest returns, but the latter lost most because it did not have the privilege of selecting lieu lands. Furthermore, more land had already been entered along the line of the Kansas Pacific than along the line of the Santa Fe. The Santa Fe, on the other hand, was privileged to select all the odd sections within a belt 40 miles wide for a distance of about 180 miles in the most eastern holdings of the public lands, in a great bulge of territory from Cottonwood Falls to Spearville. After the selections were made it was seen that the Kansas Pacific had received 3,925,791 acres or 71 percent of the full amount of 20 sections per mile from Kansas City to the western border of Kansas, whereas the Santa Fe had received the full amount of its grant. We have the statistics by years of the land sales of these two railroads, from 1868 for the Kansas Pacific, and from 1871 for the Santa Fe. They throw much light on land values, and on the role of the railroads in colonizing the Great Plains. The land grant railroads gave their purchasers generous terms and were the most important source of credit for settlers at this time.[84]

[82] Gates, *Fifty Million Acres. Conflicts Over Kansas Land Policy, 1854–1890* (Ithaca, N. Y., 1954), pp. 134 ff. The land grant was a part of the Pacific Railroad grants of 1862 and 1864.

[83] Act of March 3, 1863, 12 Stat. 772; Gates, *Fifty Million Acres*, pp. 143 ff.

[84] Gates, *Fifty Million Acres*, p. 271.

COMPARISON OF LAND SALES BY SANTA FE (2,944,788 ACRES IN KANSAS) AND KANSAS PACIFIC (8,997,713 ACRES IN KANSAS AND COLORADO)[a]

Year	*Santa Fe (in Kansas)*		*Kansas Pacific*	
	Acres	Average Price	Acres	Average Price
			(Kansas only)	
1868	-------	-----	111,271	$2.96
1869	-------	-----	382,885	2.91
1870	-------	-----	124,168	3.19
1871	71,801	$5.91	123,935	3.50
1872	45,328	5.90	62,851	2.92
1873	133,507	5.61	25,423	3.67
1874	200,459	4.54	35,393	3.29
1875	75,415	5.59	61,366	3.57
1876	122,201	5.44	74,554	4.23
1877	85,047	4.98	135,944	3.31
1878	267,122	4.52	207,938	3.38
1879	104,744	4.72	169,328	4.09
			(Kansas and Colorado)	
1880	78,241	4.98	100,383	4.03
1881	50,033	5.22	99,369	4.28
1882	189,830	4.71	105,915	4.93
1883	431,755	3.56	298,478	4.41
1884	353,090	3.36	475,007	4.21
1885	770,494	2.66	711,960	4.08
1886	347,321	2.44	230,387	4.68

[a] Compiled from *Annual Reports* of the Kansas Pacific and Santa Fe Railroads. For 1880 to 1886 the Kansas Pacific sales include also the sales of the Denver Pacific. Before that period the sales of the Denver Pacific were kept separate and are not included in the table. The Kansas Pacific grant in Kansas included 3,925,000 acres. The acreage is for gross sales which would be somewhat reduced by cancellations and forfeitures.

Indian Treaties Arouse Public

In the same act giving the Santa Fe its grant in Kansas, Congress gave the Leavenworth, Lawrence and Galveston Railroad and the Missouri, Kansas and Texas (Katy) alternate odd numbered sections for a depth of 10 miles on each side of the line with an additional 10 miles on each side for lieu sections. The grant and right-of-way were to extend "to the southern line of the State" which presumably meant the southern boundary. Unfortunately, the 34-mile deep Osage Indian Reserve, and the 2-mile Cherokee Strip lay between the railroad and the southern boundary separating Kansas and the Indian Territory. Until they were surrendered by their owners or the reserve acquired by the L.L. & G. there was little prospect of building the railroad across the territory to Texas.

The way was prepared for the acquisition of the Osage Reserve by a series of treaties. In 1860 a treaty with the Delawares provided for the sale of their 223,966-acre reserve to the Leavenworth, Pawnee and Western Railroad and the following year the Potawatomis signed a treaty for the sale of their larger reserve to the same company. The latter agreement was later forfeited by the L.P. & W. whose officers feared it would not pay; the tract, reduced to 340,180 acres through allotments, was sold to the Santa Fe Railroad. Other treaties provided for the sale of the 123,832-acre Kickapoo reserve to the Atchison and Pikes Peak Railroad and the 800,000-acre Neutral Tract of the Cherokees to the Fort Scott Railroad.

With these precedents in mind, a shrewd group of lobbyists, railroad officials, and members of Congress secured the appointment of a commission to treat with the Osages for the sale of their reserve to the L.L. & G. Railroad. By the usual combination of pressures the Osages in 1868 were brought to approve a treaty providing for the sale of their land to the railroad for 20 cents an acre. The treaty raised a storm of protest in the House of Representatives which accused the Indian Office of "grossly and fraudulently" neglecting the interests of the Indians and using "improper influence" to gain their consent. The Governor of Kansas denounced the treaty as an "audacious attempt on the part of the Secretary of the Interior and his confederates to transfer to a railroad company by unheard of methods seven million acres of land for a mere bagatelle in comparison to their real value."

So strong was the opposition to the treaty both in Kansas and in Washington, that its sponsors feared to bring it to a vote. Land reformers were disturbed at the unique influence the treaty-making power gave to the Interior Department and the Senate by which they could arrange jointly for the sale of large reservations to land companies and railroads, without the land becoming a part of the public domain and subject to the general land laws. Reformers feared that the continued use of the treaty-making power to sell whole reservations threatened the very foundation of the public land system since it made possible the direct transfer of reservations to influential groups or companies and denied to the squatters on the tracts the right of preemption or homestead.

In the House where there was more respect for the homestead principle and where the reform sentiment was more articulate, a demand was voiced for stripping from the Senate its unique power over Indian treaties. Under the leadership of George W. Julian and William S. Holman, backed by labor leaders, the *Workingman's Advocate*, and that section of the public that was becoming increasingly critical of the political influence of the railroads, Congress was persuaded in 1871 to adopt a measure that ended the practice of making treaties with Indian tribes. On March 3, 1871, after ignoring criticisms of the way it was abusing its treaty-making powers for years, the Senate gave way. Thereafter it was no longer possible for Indian officials secretly to negotiate treaties containing important provisions concerning land policy that became law when ratified in executive session by the Senate alone.[85]

Meantime, an earlier treaty with the Osages, ratified in 1865, had provided for the cession of 843,927 acres in the eastern part of the reserve as trust lands, not subject to preemption or homestead. Before ratification the Senate had added an amendment that seemed innocuous, but became the center of an angrier dispute than did the later treaty. The amendment declared that the lands should be surveyed and sold as public lands under existing laws "including any act granting lands to the State of Kansas in aid of construction of a railroad through said lands. . . ." Obviously, this amendment was included to make it possible for the L.L. & G. and the Katy to have their land grants extended across the ceded lands. Commissioner Joseph Wilson of the General Land Office held that the railroads had no rights in the ceded land, but he was reversed by Orville Browning, Secretary of the Interior. Meantime, 2,295 settlers had bought land in the ceded tract and now were required by the L.L. & G., under the decision of Browning, to pay for their land again at the rate of $4 to $10 an acre.

Public opinion was now strongly hostile to the railroad and sympathetic to the settlers who were the victims of bureaucratic uncertainty and something closely akin to outright corruption. A Settlers' Protective Association, aided by an appropriation of the Kansas

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[85] I have discussed the struggle over the Osage Reserve and the end of treaty making in *Fifty Million Acres*, pp. 194 ff.

Legislature and the support of land reform and anti-railroad elements everywhere now joined in battle with the railroads. To resist the several hundred ejectment suits brought by the railroads against the settlers who already had government titles to their lands, Jeremiah Black and Wilson Shannon were employed to carry the issue to the Supreme Court. After dreary years of wrangling, the Supreme Court in 1875 declared the two railroads had no right to the Osage land, and settlers were once again assured of their improvements.[86] They had gone through a decade of turmoil, ejectments, deep excitement and uncertainty, but ultimately regained the lands they had already bought once.[87]

Railroad Troubles in Kansas

Unusual land grants were made to railroads in Kansas which planned to build through the Indian Territory to Texas. An Act of July 25, 1866, gave the Kansas and Neosho Valley Railroad (later the Missouri River, Fort Scott and Gulf) a 200-foot right-of-way and alternate odd numbered sections of public lands for 20 miles on each side of its line from Kansas City to the boundary of Indian Territory. If odd numbered sections were not available even numbered sections could be taken. The even numbered sections within 10 miles of the road which were not thus selected were to be sold at no less than $2.50. Bona fide settlers on the land at the time of the grant were protected in their rights. The railroad was authorized to build its line through Indian Territory, was given the same 200-foot right-of-way through Indian reserves on which a general right-of-way reservation had been retained by the government. On other reserves the act stipulated that the railroad "shall procure the consent of the tribe or tribes interested, which consent with all its terms and conditions shall be previously approved and indorsed by the President. . . ." Twenty sections per mile were granted through Indian reserves whenever the Indian title was extinguished, provided that the ceded lands became a part of the public lands of the United States. Most important was Section 10 of the Act of 1866 giving the railroad permission to negotiate with, and acquire land from "any Indian nation or tribe, authorized by the United States to dispose of lands for railroad purposes, and from any other nation or tribe of Indians through whose lands said railroad may pass, subject to the approval of the President." A final extraordinary provision declared that whichever of the three railroads—the Fort Scott, the L.L. & G., or the Katy—reached the Indian Territory first should gain the privilege of building through it and have the right-of-way and the land grant.

Out of this awkwardly phrased law came a number of controversies that were to wrack Kansas politics for years. The Fort Scott Railroad employing some of the country's ablest lobbyists in and out of the government secured bounty bond subsidies amounting to $750,000, a state grant of 125,000 acres from Kansas' half million acres of internal improvement land, and the much desired Federal grant. It also desperately wanted the Neutral Tract, through the center of which its line was projected. It negotiated secretly with the Cherokees for possession of the 800,000-acre tract and after a veritable donnybrook with other interests, secured a treaty providing for the sale of the tract to it

[86] I have traced this conflict in more detail in *Fifty Million Acres*, pp. 194–222.

[87] The settlers on the Des Moines River lands of Iowa, it will be remembered, were compelled to buy their titles twice and to be involved in far longer title confusion as a result of the carelessness of Congress in preparing legislation, of the confusing decisions of the General Land Office, and of long delays in the courts. Congress appropriated $200,000 as compensation for persons whose entries had been accepted for the Des Moines lands and whose patents were later invalidated because the land had long since passed to the state. C. H. Gatch, "The Des Moines River Land Grant," *Annals of Iowa*, Third Series, Vol. I (January 1895), 639 ff.

ACREAGE OF RAILROAD ACQUISITIONS BY GRANT OR PURCHASE[a]

Kansas		Nebraska	
Kansas Pacific	3,925,791	Union Pacific	4,848,108
Atchison, Topeka & Santa Fe	2,944,788	Burlington	2,374,090
Missouri River, Fort Scott & Gulf	21,341[b]	Sioux City & Pacific	38,227
Leavenworth, Lawrence & Galveston	62,510	Central Branch, Union Pacific	2,560
St. Joseph & Denver City	463,409[c]		
Central Branch, Union Pacific	223,141		
Missouri, Kansas & Texas	705,623		
Internal Improvement Lands to Railroads	407,771		531,107
Purchases of Indian lands	1,420,775		
Totals	10,175,149		7,792,088

[a] Addison E. Sheldon, *Land Systems and Land Policy in Nebraska*, p. 87; Gates, *Fifty Million Acres*, pp. 209, 251. John McManus, director of the Kansas Pacific, was successful bidder on 142,929 acres of the Sac and Fox Reservation which may have been intended partly to benefit the Kansas Pacific.

[b] The Fort Scott Railroad grant was later forfeited, with the consent of the officials of the road.

[c] A small portion of the St. Joseph & Denver City grant was in Nebraska.

at $1 an acre. Like the sale of the Osage Reserve to the L.L. & G., the treaty for the transfer of the Neutral Tract on which 2,000 settlers already had been established produced a storm of opposition throughout Kansas and led to bitter warfare on the reserve—there were raids on the railroad offices, destruction of all the equipment of surveying parties, public whipping of the officers, driving off of construction crews, burning of piles of ties, and the gutting of the office of a newspaper subsidized by the railroad. Two men who bought land from the railroad were murdered, a sheriff was arrested and convicted of insanity for aiding the railroad, and defenders of the railroad were stoned and burned in effigy. Pitched battles between pro- and anti-railroad groups were common. Only after four companies of militia were called out to restore order did peace prevail on the tract. The sale was finally upheld by the Supreme Court.[88]

The long drawn out fight with settlers delayed construction and enabled the Katy Railroad to be the first to reach the border of Indian Territory, to gain the prized right to build through it, and the valuable land grant Congress had promised. Instead of the 1,382,000-acre land grant it was entitled to expect for its mileage in Kansas, the Fort Scott Company only received 21,341 acres. It was built through the eastern tier of counties where settlement was well advanced and where only scattered portions of land remained in public hands. Worse still, on practically every piece of land it acquired there were squatters claiming the right of preemption. If the company was to defend its rights to the land, it would incur heavy legal expenses and an additional burden of hatred and political animosity. For this meager grant of dubious value, the railroad was subject to the limitations of low rates on government traffic. The land grant, seemingly most promising and once much desired, had become a liability. The railroad became eager to forfeit it. This was accomplished in 1877, 13 years after the grant was made.[89]

Few states were treated as generously as Kansas, though this occurred only after the unrepresentative pro-slavery-Lecompton element had been displaced in power by a new combination of Free-State, Republican leaders both in Kansas and at Washington.

[88] Gates, *Fifty Million Acres*, pp. 153–93.

[89] *Ibid.*, p. 292.

Twenty percent of the acreage of Kansas (10,175,149 acres) fell to railroads, whereas Nebraska received 15 percent or 7,792,088 acres.

Error Redressed

One of the statutes granting land to the State of Kansas for what became the St. Joseph and Denver City Railroad had been awkwardly drafted by Congress and misinterpreted by the Land Office. This caused both judicial and administrative errors that required remedial legislation and imposed heavy costs upon the United States. The grant was given to Kansas for the "use and benefit" of the St. Joseph and Denver, which was to extend from Elwood, by way of Marysville, to effect a junction with the Union Pacific not farther west than the 100th meridian. Since the main line of the Union Pacific was located north of the border in Nebraska and no state grant had overlapped another state, it was questionable whether the St. Joseph and Denver could get any portion of the 10 sections per mile the act seemed to grant in Nebraska. Because of the uncertainty created by the awkward wording of this legislation and the fact that the railroad did not immediately press for lands north of the boundary, the Land Office permitted individuals to homestead and file preemptions on odd numbered sections in Nebraska within 10 miles of the line and patents were issued to the settlers.

Sixteen years after the grant was made, action was brought by an assignee of the railroad against a settler who had homesteaded and received his patent in one of the odd sections. The court declared that the settler's patent was void. As Senators later said, the United States did not guarantee its title, and in these as in all cases it gave in its patents only such right as the United States possessed at the time. Five years elapsed during which the settlers were served with notices threatening eviction unless they paid for their titles again. The consciences of members of Congress were finally touched and on March 3, 1887, they enacted a measure allowing the distressed settlers not over $3.50 an acre (the price the assignee demanded) for not over 160 acres each in compensation for the error of the government. Nonsettlers were allowed only the $1.25 an acre they had paid for their holdings.[90]

Routes to the Pacific

Since the late 1840's a railroad from Lake Superior to Puget Sound had been under consideration. The Pacific Railroad Surveys, reported in 1855, had endorsed the northern route, but had shown more favor to one of two southern routes. What helped the northern route in the fifties but counted against it in the sixties was the fact that a group of top ranking Democrats—including William W. Corcoran, the Washington banker and creditor of a number of them and a major beneficiary of plums they had to hand out, Stephen A. Douglas, Jesse Bright of Indiana, Henry M. Rice of Minnesota, John C. Breckenridge of Kentucky, and others—had acquired the site of present Superior which they projected as the terminus of the northern transcontinental. As the first step in making Superior City a great railroad center, they succeeded in 1854 in obtaining a land grant of 850,000 acres for a railroad (the Minnesota and Northwestern) from Minneapolis to the eastern border of the territory in the direction of Lake Superior. Unfortunately, the promoters of the railroad committed a number of indiscretions in lining up support for their enterprise. A charter from the Territorial Legislature had been obtained that would enable the company to receive

[90] 24 Stat. 550; *Cong. Record*, 49th Cong., 2d sess., p. 515 *et seq.;* Sheldon, *Land Systems and Land Policies in Nebraska*, pp. 92–93. Rae, "Railway Land Subsidy Policy," p. 101. Unlike the usual grants to states for railroads, the Act of July 28, 1866, made the grant to Kansas but specified clearly it was to be for the St. Joseph and Denver Railroad. This may explain why Donaldson, p. 271, lists it as a grant to a corporation.

the grant. There was opposition in Congress to allowing the grant to fall into the hands of the local company and the bill was framed to exclude that possibility.

Between the actual passage of the measure and its publication, however, two words were changed, thereby reversing the intention of Congress. There followed a great outcry and an investigation to determine who had made the changes. Not getting any satisfaction, Congress angrily repealed the land grant. Even more extraordinary was the fact that Congress had made a grant to a territory, which, as Donaldson says, "is not a sovereignty."[91] The failure of the promoters to win a Wisconsin grant for a line to Superior, together with the Panic of 1857, ended their hopes for the city. Shares in the company which had risen as high as $100,000 and lots in the city, once held for $2,000, now could find no takers.[92] It took Superior long years to recover. When a transcontinental was chartered to be built from Lake Superior, its eastern terminus was not at Superior but at Duluth in which leading Republicans had an interest.

On July 2, 1864, Congress incorporated the Northern Pacific Railroad Company, gave it a right-of-way of 400 feet and 20 sections of land (12,800 acres) for each mile of road in states and 40 sections (25,600 acres) for each mile in territories for a railroad to extend from Lake Superior by way of the 45th parallel to Puget Sound with a branch down the Columbia to Portland, Oregon. Beyond the primary grant area of 20 miles on each side in the states and 40 miles in the territories, a lieu or indemnity area of 10 additional miles on each side was provided and in 1870 a second 10-mile indemnity area was made available. Thus was endowed the longest railroad in America—2,128 miles from Duluth to Tacoma and Portland—with by far the largest land grant, estimated at 45 million acres, to be selected within a strip of land 80 miles wide in the states and 120 miles wide in the territories. This was an area larger than the State of Missouri.[93]

Unlike the Union Pacific and the Central Pacific, which together completed the first transcontinental railroad in 1869 but which were built through areas where notable communities had been established before construction, the second transcontinental, the Northern Pacific, was projected almost entirely through virgin territory with no development of any importance anywhere along its line.[94] Advocates hoped that the land grant would provide the cost of construction; as events turned out it did go a long way to meet the cost, but that was only after many years. Until then, the sale of bonds and equity capital produced the necessary funds. Prematurely planned, with its bonds a drug in the market, interest accumulating, and earnings from a partly constructed line in-

[91] Acts of June 29 and Aug. 4, 1854, 10 Stat. 302, 575; Donaldson, *The Public Domain*, p. 265; Folwell, *History of Minnesota*, I, 327–50; Henry Cohen, "Business and Politics from the Age of Jackson to the Civil War: A Study from the life of W. W. Corcoran" (Ph.D. dissertation Cornell University, 1965), pp. 329–55.

[92] Cohen, "Business and Politics," pp. 368–69.

[93] 13 Stat. 365; 16 Stat. 378.

[94] Jay Cooke and Company's appraisal of the Northern Pacific grant as of 1870 differed very markedly from that of later railroad officials who were trying in the 1930's to minimize the land grants and their part in providing the cost of construction. As financial agent of the Northern Pacific, the Philadelphia banking house published a brochure to attract capital; on p. 4 of *The Northern Pacific Railroad; Its Route, Resources, Progress and Business*, appeared the following on the 50 million–acre grant: "This superb estate is larger by 10,000 square miles than the six New England States, or as large as Ohio and Indiana combined. There is room in it for ten States as large as Massachusetts, each of them with a soil, climate, and resources of coal, timber, ores of metals, and perpetual water-power, altogether superior to those upon which Massachusetts has become populous, rich, refined and politically powerful." Estimates of the value of the Northern Pacific's "landed empire" ranged in this brochure from $165 million to $550 million (p. 14).

significant, the railroad was forced into bankruptcy in 1873–75. It was then reorganized and with new capital it was pushed to completion in 1883.

Because of the huge size of its land grant—23 percent of North Dakota, 15 percent of Montana—which was brought into market and sold very slowly, and because the company delayed in taking out its titles and making its lands taxable, the Northern Pacific Railroad came under a concerted attack by agrarians, anti-railroad people, and heavy taxpayers who wanted to have their burden shared. Nevertheless, as James B. Hedges has shown, its officials had pressed their search for buyers, both abroad and in the older parts of the United States, and had contributed greatly to directing emigration to the lands along their line.[95]

The third transcontinental to receive a land grant was the ill-fated Atlantic and Pacific. West of Memphis this railroad was to follow the 35th parallel route which had been favored by the Pacific Railroad Commission. The Act of July 27, 1866, granted the Atlantic and Pacific a 200-foot right-of-way through the public lands from Springfield, Missouri, to the Canadian River in Indian Territory, thence across several Indian reservations and the panhandle of Texas. It was then to follow the 35th parallel to Albuquerque, to the Colorado, and continue by the most practicable route to the Pacific. A branch was authorized from the Canadian River to Van Buren (Fort Smith), which would give direct connections with Memphis.

The terms of the grant were the same as those given the Northern Pacific: alternate odd numbered sections for a distance of 40 miles on each side of the line in territories (in states for a distance of 20 miles) with a lieu area 10 miles beyond. Since a considerable part of the Atlantic and Pacific was projected through Indian territory it was provided that the "United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act."

Southern Pacific officials were already a power in California and extraordinarily effective in lobbying in Washington. They succeeded in having a provision added to the Atlantic and Pacific charter and land grant authorizing it to join the new route to the Coast at the California boundary, thus providing connection with San Francisco. For its route to the Colorado, the Southern Pacific was promised the same 20 sections per mile that the Atlantic and Pacific was to receive in states. This grant of 1866 to the Southern Pacific occasioned some of the sharpest fighting between the settlers and the railroad, a struggle that was later to be dramatized in Frank Norris' *The Octopus*.

Atlantic and Pacific officials were hard pressed from the outset to raise the necessary funds to push construction forward and earn the land grant. The Missouri portion of the line was completed early but the land it was entitled to select had previously been picked over and was not the best. The A. & P. absorbed a predecessor railroad which had its own land grant in the even sections. A favorable interpretation by the Land Office permitted the A. & P. to select both odd and even sections, which again outdated the notion that the government would recover from the reserved sections the equivalent of what, without the grants, it would have received for all the land.[96]

The acquisition of the even sections in

[95] James B. Hedges, "The Colonization Work of the Northern Pacific Railroad," *Mississippi Valley Historical Review*, XIII (December 1926), 311–42; David M. Ellis, "The Forfeiture of Railroad Land Grants, 1867–1894," *ibid.*, XXXIII (June 1946), 27–60.

[96] William S. Greever, *Arid Domain. The Santa Fe Railway and its Western Land Grant* (Stanford, Calif., 1954), p. 28.

Missouri was a small boon that did little to enhance the economic position of the A. & P. Most serious was the fact that its officials could not persuade Congress to have the Indian land in the territory made a part of the public domain to enable the railroad to obtain the generous grant of 25,600 acres per mile. Failure to receive the promise of 7 million or 8 million acres if and when earned by construction across the territory, combined with the nearly total absence of traffic, made it impossible for the railroad to raise the necessary funds with which to build the line. Bankruptcy was inevitable for the company had extended its credit to the utmost, had built some mileage that was unproductive, and had little further to attract investors in 1875. The eastern portion of the A. & P. that had been constructed as far as Vinita, Indian Territory, subsequently became the St. Louis and San Francisco (The Frisco).

Meantime, the Santa Fe Railroad, though lacking a land grant beyond Kansas, had reached the Colorado border where its men literally fought with those employed by the Denver and Rio Grande Railroad for control of the Raton Pass, the only feasible route to Albuquerque. Having won that engagement, it pushed its construction on to Albuquerque, which it attained in 1880. It then agreed with the St. Louis and San Francisco Railroad to provide the funds with which to build to the Needles crossing of the Colorado and on to the Coast. In 1883 construction was completed from Albuquerque to the Needles, where the railroad met the Southern Pacific, which connected with San Francisco, and a third transcontinental line was ready for operation. Later the Santa Fe built lines to San Diego, Los Angeles, and San Francisco.

As for the land grant of the Atlantic and Pacific, the Missouri portion and a part of the grant in New Mexico was acquired by the Frisco Lines as heirs of the A. & P. The grant of that portion of the line east of Albuquerque along the 35th parallel route that was not built, amounting to 10,795,480 acres, was forfeited in an Act of July 6, 1886.[97] For the part of the line from Albuquerque to Needles and on to the Coast, which through agreement with the Frisco Lines was built by the Sante Fe, 11,500,304 acres were earned and patented.[98]

The fourth transcontinental grant was given on March 3, 1871, just when the movement against railroads for their land policies and rate discrimination was sweeping parts of the West. Furthermore, it was adopted within a year after the House of Representatives had approved a resolution declaring that "the policy of granting subsidies in public lands to railroads and other corporations ought to be discontinued . . . ," as is seen below.[99] The act provided for the incorporation of the Texas Pacific Railroad which was to extend from the eastern Texas border in Harrison County (which is due west of Shreveport and Vicksburg), by way of the 32d parallel route, which had been investigated by the Pacific Railroad Commission, to El Paso, and presumably Fort Yuma, and thence to San Diego. It was given the same land grant as the Northern Pacific and the Atlantic and Pacific, beginning at El Paso on the Texas–New Mexico border to the Coast with a right-of-way of 400 feet. In the event that the line ran too close to Mexican territory to permit selection of all the land to which it was entitled, it could make lieu selections therefor within the 10-mile limit beyond the 40-mile primary area on the north side. Lands not sold within 3 years after the completion of the road were to

[97] Rae, "Railway Land Subsidy Policy," p. 319, says that when the A. & P. grant east of Albuquerque was forfeited the Secretary of the Interior ordered that both odd and even sections should be retained at the $2.50 price, notwithstanding the fact that the legislation of 1880 had abolished the double-minimum price for the government-reserved sections.

[98] Greever, *Arid Domain*, *passim;* L. L. Waters, *Steel Trails to Santa Fe* (Lawrence, Kans., 1950), pp. 54 ff.; Ellis, "The Forfeiture of Railroad Land Grants, 1867–1894," p. 42.

[99] *Cong. Record*, 41st Cong., 2d sess., p. 2095. The resolution was adopted without a division.

be subject to settlement and preemption at not over $2.50 an acre. One might say that the Texas Pacific Railroad was surfeited with lands, for through a subsidiary it controlled in Louisiana it had another Federal grant and it gained control of large grants in Texas. However, the Southern Pacific had built its line along the 32d parallel by way of Fort Yuma, reaching El Paso by 1882 where it met the Texas Pacific and the latter was never to get farther west. For noncompliance with conditions of the grant, Congress provided for its forfeiture on February 28, 1885.

The Southern Pacific Railroad, already rich in land gained by its subsidiary, the Central Pacific, for its line from Ogden, Utah, to Sacramento and from Sacramento to San Jose, captured the generous grant of the Atlantic and Pacific from San Francisco to the Needles where it was to join with the Atlantic and Pacific.[100] Next, it succeeded in having an amendment added to the Texas Pacific Railroad Act that permitted it to build from the Tehachapi Pass to Fort Yuma where it would join the Texas Pacific. By this amendment and the amendment to the Atlantic and Pacific Railroad Act it had created—and for a time achieved—the possibility of controlling both routes through California. This line from the Pass to Fort Yuma was to be given the same grant of 20 sections per mile of road, bringing to more than 11 million acres the company acquisition in California. The lands for this branch overlapped those given the Texas Pacific. When the grant of the latter was forfeited the Southern Pacific argued that it was entitled to receive all the odd sections instead of the smaller number that would have been available. Cleveland's Secretary of the Interior refused to accept this interpretation and the Southern Pacific had to be content with every other odd section, being permitted to select 1, 5, 9, or 3, 7, 11 and so on.[101]

[100] McAllister, "Railroad Land Grant Disposals in California," p. 189.

[101] Rae, "Railway Land Subsidy Policy," p. 318.

While the Southern Pacific was building its line from Fort Yuma to El Paso, its officials boasted that they could build the line without a land grant. However, when it appeared that the Texas Pacific was not going to build the line west of El Paso for which its grant was given, the Southern Pacific leaders tried to have the land grant through Arizona and New Mexico transferred to it, arguing that they had built the line for which it was granted. Their political power did not quite reach this far and the request was denied.[102]

Between 100 million and 110 million acres were thus promised the transcontinental railroads, i.e., the Northern Pacific, the Union and Central Pacific and the Kansas–Colorado branch of the Union Pacific, the Atlantic and Pacific, and the Texas Pacific. Congress was not through even yet for between 1862 and 1871, in addition to grants to the Pacific Railroads, the Burlington in Nebraska, four grants to Kansas lines, and enlargement of a number of grants made in the fifties, additional grants were made to states for railroads in Iowa, Minnesota, Missouri, Michigan, Louisiana, Arkansas, and California.

Grants to and by States

The grant to California is another variation of grants to states in which the railroad beneficiary, contrary to usual practice, was specifically named. In fact, the Act of March 2, 1867, granted directly to the Stockton and Copperopolis Railroad a 200-foot right-of-way through the public lands and the right to take materials from adjacent public lands, provided that the Legislature of California should give a charter to the company for such construction. To the State of California

[102] Donaldson, *The Public Domain*, pp. 893–94; 16 Stat. 573; 23 Stat. 337. Useful on the Texas Pacific is S. G. Reed, *History of the Texas Railroads* (Houston, 1941), and on the Southern Pacific is Stuart Daggett, *Chapters on the History of the Southern Pacific* (New York, 1922).

were given 10 sections for each mile of this road with the privilege of selecting lieu lands in an indemnity area 10 miles farther, thereby making it possible for the state to establish such conditions as it wished concerning the railroad and the disposal of its land. Less than a year earlier Congress had given to the Placerville and Sacramento Valley Railroad Company the same 200-foot right-of-way and 10 sections of land for each mile of its line, then projected into the foothills of the Sierra Mountains, without the intervention of the state. At the request of the Legislature of California both grants were forfeited in 1872 and the lands were restored to entry.[103]

The last of the railroad grants to be mentioned and one of the best known because it created many problems and was later forfeited and administered by the Federal government, was given for a railroad to extend northward from a point on the Central Pacific, later located at Davis in Sacramento Valley, California, to Portland, Oregon. This railroad, known as the California and Oregon, later came into the control of the Southern Pacific. It was given 20 odd sections per mile with the privilege of selecting lieu lands within an indemnity area between 20 and 30 miles from the road. An Act of April 10, 1869, extended the time for filing assent to the act and added the famous homestead clause about which so much was to be heard:

> The lands granted . . . shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

A similar provision was included in an act extending the original 1853 grant of the Little Rock and Fort Smith Railroad, in the extension of the grant of an Alabama Railroad, and in an Act of May 4, 1870, donating lands for a railroad to connect Portland, Oregon, with Astoria.[104] These homestead clauses were added to the land grants in the pious hope that they would be enforced, but without exception they met only callous neglect by railroad officials and there is no known evidence of government officers in the 19th century trying to enforce them.

Delay of the Oregon and California, as the line from Portland to the California border (where it connected with the California and Oregon) was now called, in completing its construction and in selling its lands, and discontent with its rates, led to a strong movement for forfeiture of all its land grant. This was going too far for many members of Congress. Instead a compromise was worked out in 1888 whereby the land along the uncompleted portion of the line from Portland to Astoria was forfeited, amounting to 810,880 acres. A year earlier the Oregon and California railroad had been completed to the California border where it united with its California counterpart to give through connections from Sacramento to Portland. Thereafter, the Oregon and California paid little heed to the requirement in the Act of 1869 for sale in small tracts at no more than $2.50 an acre. Of 813,000 acres sold by 1908 only 127,000 had been sold as the law required. By then it had ceased to make any sales, for what was left of its 3,728,000-acre grant was steep-sloped and altogether unsuited for farming but covered with enormously heavy stands of Douglas-fir which was coming into demand. Clashing interests finally resulted in the forfeiture of the grant and the return to Federal ownership of 2,891,000 acres. The O. & C. and Coos Bay (wagon road grant) forfeited lands later became the basis of the forest management program of the Bureau of Land Management.[105]

Texas, which had retained all the public lands within its borders, was generous to railroads, granting them 35,191,738 acres,

[103] Ellis, "The Forfeiture of Railroad Land Grants," p. 39.

[104] Acts of April 10, 1869, May 4, 1870, and March 3, 1871, 16 Stat. 46, 47, 94, 580.

[105] David M. Ellis, has told the story of the O. & C. lands in "The Oregon and California Railroad Land Grant, 1866–1945," *Pacific Northwestern Quarterly*, XXXIX (October 1948), 253–83.

21 percent of its entire area. Other states which had received large donations from the Federal government for swampland improvement and internal improvements also used a good deal of their land for railroads, as the following table indicates:

STATE GRANTS FOR RAILROADS

	Acres
Arkansas	622,850
Florida	9,048,693
Iowa	502,581
Michigan	1,695,510
Minnesota	2,858,584
Kansas	407,771[a]
Nebraska	498,742[b]
Texas	35,191,738
Maine	711,722
Total	51,133,620 (net of 48,883,372)

[a] The Kansas lands were sold, not given, to the railroads. Of the lands in this table all but the Texas and Maine lands had come to the states from grants cut out of the public domain.

[b] Sheldon, *Land Systems and Land Policies*, p. 213, gives different amounts for the Nebraska grants.

Railroads as Land Dispensers

Federal Coordinator of Transportation Joseph B. Eastman, as part of his great study, *Public Aids to Transportation*, found that a total of 131,230,358 acres of public land was given by Congress for railroad construction of which 3,893,074 has to be deducted for errors in patenting and conflicts in titles, leaving a net of 127,337,284 acres. The gross total of Federal and state grants is given as 176,220,656 acres. This total excludes the 37 million acres which were granted but later forfeited because the grantee had not conformed to the requirements of the donation. For many years the railroads held control over these subsequently forfeited lands and as a result settlement was held up.

Next to the states, the railroads were the greatest secondary dispensers of lands in the United States. Their management policies in advertising, pricing, credit, classification, withdrawals from sale, development, leasing, all profoundly affected the areas of their location. In turn, their policies were curbed and moderated by the abundance of public land in the midst of railroad lands. The primary objective of the railroads, other than making a profit, was the building up of traffic.[106] Generally they were concerned to develop the government lands in their vicinity, though it is understandable that they should have pushed the sale of their own lands more since the land grant was expected to provide part of—and in some instances practically all—the cost of construction. Furthermore, the land bonds based on a mortgage on the lands were to be retired from income from the grant. Added to all these considerations was the political one that never could be ignored: public opinion wanted the lands sold as quickly as possible and at prices that were not out of line with those the states and speculators were asking for their lands.

Like government land policies, railroad land policies were rarely free from attack. Complaints were made that the prices were too high, that companies sometimes took advantage of the law to deny settlers preemption rights, that to avoid patent and consequently taxes, they delayed paying the surveying and conveyance costs, and that their delays in establishing routes and selecting lands kept at least twice the amount of land they were entitled to out of development, and that their influence at the Land Office was all-powerful. One student of "Railway Land Subsidy Policy" offers an abundance of evidence that lays the blame on Congress for many of the less favorable features of the policy. He points out that some grants were given states that had not requested grants and that were not willing

[106] The Southern Pacific Railroad seems to have been somewhat of an exception, for it devoted considerable space in its advertising literature to showing how much more advantageous it was to buy land from the railroad than to preempt or homestead public land. W. A. McAllister, "Railroad Land Grant Disposals in California," pp. 273–74.

to accept them with the obligations they entailed. A number of such grants were ultimately forfeited after long periods of complete inaction. Carelessly drafted measures led to uncertainty about routes, about the rights of railroads nearing or crossing each other, about the inclusion of swamp or what the states tried to call swampland in grants, about the penalty of forfeiture for failure to build the lines or to build on time, and about restrictions affecting the right to select indemnity lands. But worst of all, Congress refused to give the Land Office sufficient staff and appropriations with which to press forward its surveys, scrutinize selections carefully, bring its records up to date, and require the railroads to take title and have their lands made taxable.[107]

Resentment Grows

The West wanted internal improvements almost as much as it wanted free land and was nearly unanimous in supporting land grants for roads, canals, and railroads. Yet it had a phobia against "land monopoly." When it saw evidence that railroads were not prompt in bringing their lands on the market and putting them into the hands of farm makers, the West turned from warm friendship to outright hostility to the railroads. It began to demand, first, an end to the practice of making land grants and, later, the forfeiture of unearned grants, partially earned grants, and finally, unsold grants. By the late sixties the same forces that had worked to end the treaty-making policy to obtain Indian lands were striving to halt the policy of making land grants to railroads. Reform-minded representatives from Illinois, Indiana, and other older public land states reflected anti-railroad feelings, raised to white heat by the Grangers' fight for railroad regulation and for the retention of the remaining public lands for actual settlers. Organized labor, speaking through its journal, the *Workingman's Advocate*, and the larger group of citizens who were coming to feel that the railroads had demanded too much of the government and had been arrogant towards the public, favored ending the practice of making railroad land grants. They were partly supported by Joseph S. Wilson, Commissioner of the General Land Office, and by President U. S. Grant himself, who expressed doubts about further donations.

After much heated argument in state capitals, in Washington, and in the press, and the presentation of petitions from the Legislatures of California, Wisconsin, Indiana, Missouri, Ohio, and Pennsylvania to the effect that land grants were a "violation of the spirit and interest of the national Homestead Law and manifestly in bad faith toward the landless," Congress acted. First, settlers' clauses were added to a number of railroad land grants requiring that the lands being granted be sold to settlers at no more than $2.50 an acre. Then on March 21, 1870, the House adopted the Holman resolution declaring "the policy of granting subsidies in public lands to railroads and other corporations ought to be discontinued" and that the public lands should be held for the "exclusive purpose of securing homesteads to actual settlers . . . ." Notwithstanding this ringing declaration Congress in 1871 made one further grant—a large one to the Texas Pacific—though a modified settlers' clause was attached to it.[108] This was the last grant, however.

Forfeiture of unearned, partially earned, and unsold grants was to be more difficult

[107] Rae, "Railway Land Subsidy Policy," *passim.* Others who have brought out much the same criticism are Harold H. Dunham, *Government Handout. A Study in the Administration of the Public Lands, 1875–1891* (New York, 1941); Leslie E. Decker, *Railroads, Lands, and Politics. The Taxation of Railroad Land Grants, 1864–1897* (Providence, 1964).

[108] Marianne E. Weiss, "The Movement to End the Land Grants to Railroads" (Master's thesis, Cornell University, 1939), p. 97 and elsewhere.

to achieve because of the Supreme Court dictum that the grants belonged to the railroads once they were made. A series of measures succeeded in bringing about the forfeiture of several grants, one or two with the approval of the railroads. In 1890 after long agitation a general forfeiture act was adopted providing that unearned grants of projected railroads should be forfeited to the United States. The measure satisfied few of the agrarians who were most anxious to have the huge Northern Pacific grant forfeited, or at least that portion along the Cascade branch which was built after 1879. The forfeiture act did cause relinquishment of some 2 million acres along the branch of the railroad down the Columbia from Wallula to Portland, which had not been built. (The Northern Pacific had acquired another line, already built, that joined these two points.) Aside from this forfeited segment the Act of 1890 "was virtually an official confirmation" of the Northern Pacific grant, as David Ellis has said. Opponents of forfeiture had seen that the pressure for action was irresistible and had given way, in effect accepting the lesser evil in order to prevent the greater.[109]

It was the land grants that persuaded capitalists to invest in securities of the railroads and enabled the railroads to advance far beyond the zone of settlement, to be the true pioneers in opening up new areas to growth. That some were built too far in advance of need must be conceded, especially in the light of their subsequent bankruptcy.[110] The strenuous immigration promotion campaigns undertaken by the land grant railroads were felt all over Europe and in the older states. The results are to be seen in the rapid settlement of the West which, it had been earlier thought, would take one or two centuries. By 1890, the Superintendent of the Census could say: "The Frontier is gone." The rush of new states into the Union in 1876, 1889, 1890, 1896, 1907, 1911, and 1912, the vast outpouring of the new West in wheat, other grains, and animal products all were made possible by the railroads, and they in turn by the land grants. Later generations were to question the wisdom of the policy but few could have foreseen the subsequent problems in advance.

Land Grant Rates

Railroad land grants to states and later to corporations were given solely to aid in construction and had to be earned by the building of the roads. There were no mineral reservations in the grants before 1862. Certain limits were placed in the measures, for clearly Congress had no thought of tying up land indefinitely for enterprises existing only on paper. The Chicago and Mobile Act of 1850 provided that if the railroad was not completed in 10 years the unsold portion of the grant was to be forfeited and the States of Illinois, Alabama, and Mississippi were required to pay to the United States any amount they had received from portions they had sold, but all titles they had given on such sales were not to be disturbed. In all later grants to states it was specified that if the railroads were not completed in 10 years the unsold portion of the lands should revert to the government.[111] All railroad lines aided by land grants of the fifties were to transport "property or troops of the United States" free of charge and were to carry United States mail at prices set by Congress.

Beginning with the Union Pacific Act of 1862 Congress provided for the reservation of minerals in the granted lands but modified

[109] Ellis, "Forfeiture of Railroad Land Grants," pp. 52–55.

[110] For recent theoretical studies of the premature building of railroads in the United States see Robert W. Fogel, *The Union Pacific Railroad. A Case in Premature Enterprise* (Baltimore, 1960) and *id.*, *Railroads and American Economic Growth: Essays in Econometric History* (Baltimore, 1964); and Albert Fishlow, *American Railroads and the Transformation of the Ante-Bellum Economy* (Cambridge, Mass., 1965).

[111] 9 Stat. 466.

this in the amendatory Act of 1864 by excluding coal and iron deposits from the reservation. Section 17 of the original act stated that if the two roads to be built respectively from the East and the West were not completed by 1876 all their property including lands, rolling stock, and rights-of-way, should be forfeited to the United States. Government traffic should at all times be given preference, and compensation "at fair and reasonable rates . . . not to exceed the amounts paid by private parties" should be allowed.

In the Atlantic and Pacific Act of 1866, it was stated that the charges for "postal, military, naval, and all other government services" were to be established by Congress. The last of the transcontinental grants to the Texas Pacific declared that charges for all government traffic should be at "fair and reasonable rates . . . not to exceed the price paid by private parties" for the same service.

Despite this relaxation from the "free from toll or other charges" provision in the grants to the transcontinentals, Congress continued to insert the words in its new grants to the states. This created the situation in Kansas whereby the Santa Fe railroad, when completed, would have to carry government traffic, except mail, free while the Kansas Pacific would be able to charge rates presumably equal to those paid by other shippers.

The Civil War brought to the fore the inequities in the transportation of government traffic by land grant railroads. Of vital strategic importance was the Illinois Central Railroad with its line to Cairo and connecting elsewhere with the major east-west roads. The flow of troops, grain and meat, hay, horses, ammunition, cannon, and other supplies to which precedence was given inundated the line, causing delay and indeed some financial losses to the company and wearing out its equipment. Officials of the War Department recognized that the "free from toll" provision would mean that maintenance outlays would be cut to the bone and would bring heavy financial losses to the railroad unless some adjustment was made. Their solution was to allow the railroad a fair rate, that is the usual rate, minus 33⅓ percent, for both troops and supplies.[112] Few other land grant railroads were of importance except those of Missouri, and they were given special treatment by Congress.

Both the Hannibal and St. Joseph and the Pacific Railroads of Missouri were seriously damaged by Confederate and Union raiders; their bridges were burned, track torn up, rolling stock destroyed or run off. Congress resolved on March 6, 1862, that the ability of the railroads to transport material of war and troops had been so impaired that, notwithstanding the "free from toll or other charges," it must allow the companies rates for services such as the War Department had established for the Illinois Central.[113]

Members of Congress were not satisfied with the solution the War Department had applied to the Illinois Central and had extended to the Missouri railroads. In 1874 it forbade further payments by the War Department for transportation of troops or supplies on land grant railroads. Naturally the railroads took the issue to the courts. They secured from the Supreme Court a decision based on what Haney calls illogical reasoning in which the intent of Congress was ignored. Railroads were awarded compensation for all government transportation (except for mails which had been handled differently) "subject to a fair deduction . . ."[114] The court did not hold that the railroads could expect to receive the full compensation charged other shippers and a formula was needed. In 1882 Congress declared that no more than 50 percent of the

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[112] Haney, *A Congressional History of Railways in the United States, 1850–1887* ("Bulletin of the University of Wisconsin," No. 342, Madison, Wis., 1910), pp. 34–35; Howard G. Brownson, *History of the Illinois Central Railroad to 1870* ("University of Illinois Studies in the Social Sciences," Vol. XII, No. 10 (Urbana, Ill., 1915), 66–67.

[113] 12 Stat. 614.

[114] Haney, *Congressional History*, pp. 36–37.

full rate should be charged the government until the courts had worked out a formula and this 50 percent rate was thereafter sanctioned by the courts and was to continue in operation until the adoption of the Transportation Acts of 1940 and 1946. Meantime, the rate for carrying the mails was fixed at 80 percent of normal rates.[115]

Originally the land grant rates only applied to those carriers which had received grants and only for that portion of their mileage thus aided but, because government business was diverted to the routes offering it the lowest rates, the non-land-grant railroads found it desirable to meet the competition by accepting the same land grant rates. There is no evidence that the carriers were happy with the reduced rates they received for government business, but they went along with it until the late 1920's and 1930's when their volume of transportation was slipping away to trucks, buses, and airlines. Then, under the leadership of the American Association of Railroads, and supported by many other business groups, a campaign got under way to end the land grant rates. As part of the program of education the AAR endeavored to show that the land grants were not as extensive as some historians had indicated, that the lands so given were on the whole not very valuable and that few railroads had netted any large return from them. Because of the extent of this campaign, the Federal Coordinator of Transportation was instructed to compile data showing the total amount of land grants by Federal and state governments, the amount in dollars of other aids of government at all levels, the gross and net return from the grants and the value of the lands remaining in railroad hands. There was a good deal of controversy concerning the respective data prepared by the AAR and the Federal Coordinator which showed wide difference in calculation and appraisals.[116]

Opposition to the abandonment of land grant rates was centered in the two most interested Departments, War and Navy, which feared costs would be substantially

[115] The Act of 1882 exempted the Pacific railroads which had received government bond aid from 50 percent rate charge. Haney, *op. cit.*, p. 38.

[116] Colonel Robert S. Henry of the AAR prepared an article on "The Railroad Land Grant Legend in American History Texts," *Mississippi Valley Historical Review*, XXXII (September 1945), pp. 171–94, wherein he takes the writers of history texts to task for magnifying the significance of the grants and their value and neglecting or minimizing the returns the government received in the form of land grant rates. His article was critically examined by a number of historians in the same journal for March 1946, pp. 557–76 and by Charles S. Morgan—under whose charge Vol. II of the Federal Coordinator's Report on *Public Aids to Transportation* was prepared—in the same journal, XXXIII (December 1946), pp. 443–54. Colonel Henry replied to his critics in *ibid.* (June 1946), pp. 115–20. The Henry map showing the Federal land grants only, and only those that were earned and patented and not forfeited, in actual proportion, has been reprinted by the Bureau of Land Management in *Public Land Statistics, 1964*, p. 11. There is much that is wrong with the map but to cite only one feature, it shows the Santa Fe grant in Kansas extending from Atchison to the western border of Kansas but for the first 125 miles it received no land. Consequently, it was permitted to take all the available lieu lands in the indemnity area for the next 100 miles, thereby giving it a big bulge in this fertile and productive area in contrast to the much slighter amount of land it acquired in the extreme western and semi-arid portion of Kansas. Furthermore, the Santa Fe was permitted to purchase the Potawatomi diminished reserve of 340,180 acres at a modest price which, as L. L. Waters has shown, it was able to sell quickly and to finance the beginning of its construction from their returns. L. L. Waters, *Steel Trails to Santa Fe*, pp. 219–20; the map of the Santa Fe lands on p. 221 showing this bulge in central Kansas and the Potawatomi Reserve is much more meaningful than Colonel Henry's map. Neither the Donaldson nor the Henry map shows grants made, and for years kept out of use and later forfeited, nor do they show the state grants. The Henry map obscures the rationale on which grants were made—that the building of the railroads would enable the government-reserved sections held at $2.50 an acre to be sold and thereby net the government just what it might have received from all the land.

PUBLIC LAND DONATIONS TO THE STATES[a]

State	For Railroads	For Wagon Roads	Canal and Other Internal Improvements	Swamp and Indemnity	All Grants	Percent of Total Area
Alabama	2,747,479		400,016	441,666	5,007,088	15.3
Arizona					10,543,753	14.3
Arkansas	2,563,721		500,000	7,686,575	11,936,834	35.5
California			500,000	2,193,965	8,852,140	8.8
Colorado			500,000		4,471,604	6.7
Florida	2,218,705		500,000	20,326,708	24,208,000	68.8
Idaho					4,254,488	7.9
Illinois	2,595,133		533,368	1,460,164	6,234,655	17.3
Indiana		170,580	1,259,271	1,259,271	4,040,518	17.5
Iowa	4,706,945		821,342	1,196,392	8,061,262	22.4
Kansas	4,176,329		500,000		7,794,669	14.8
Louisiana	353,057		500,000	9,504,412	11,441,032	39.3
Michigan	3,134,058	221,013	1,751,236	5,680,312	12,143,846	33.0
Minnesota	8,047,469		500,000	4,706,591	16,422,051	31.7
Mississippi	1,075,345		500,000	3,348,013	6,097,064	20.5
Missouri	1,837,968		500,000	3,342,521	7,417,022	16.8
Montana					5,963,338	6.3
Nebraska			500,000		3,458,711	7.0
Nevada			500,440		2,725,666	3.8
New Mexico			100,000		12,794,659	16.3
North Dakota					3,163,552	7.0
Ohio		80,774	1,204,114	26,372	2,758,862	10.5
Oklahoma					3,095,760	6.9
Oregon		2,583,890	500,000	286,108	7,032,847	11.4
South Dakota					3,435,373	6.9
Utah					7,507,729	14.2
Washington					3,044,471	7.1
Wisconsin	3,652,322	302,931	1,022,349	3,361,283	10,179,804	28.7
Wyoming					4,343,426	6.9
Total	37,128,531	3,359,188	13,910,744	64,910,353	223,884,994	

[a] I have rearranged some of the data from *Public Land Statistics, 1966*, pp. 7–8.

increased. Another factor holding up action in Congress was the desire of the Departments of Agriculture and Interior to block up areas subject to their administrative control which were interspersed with the unsold odd numbered sections still held by the railroads. A total of 15,840,077 acres were still held by the railroads. The Southern Pacific had 8,044,476 acres; the Northern Pacific 4,819,732; the Santa Fe 1,784,616; and the Union Pacific 923,239. Some of this land, notably that of the Southern Pacific, had great value for its oil and its agricultural possibilities. To have returned to government ownership the checkerboard sections within the national forests and grazing districts would have had many administrative advantages but the difficulties of getting the surrender of land owned by the carriers for a half-century were too great and the proposal was dropped

By 1940 the plan to abandon land grant rates had gained substantial support both in and out of Congress, with Joseph Eastman, Federal Coordinator of Railroads, assuming a strongly favorable position. In the Transportation Act of 1940 Congress abandoned the reduced rates for mail and civil property of the government but not for

GRANTS DIRECT TO RAILROADS AND TOTAL OF ALL GRANTS TO STATES AND RAILROADS

	Grants to Railroads	Total of Grants to States and Railroads	Percentage of States in all Grants
Arizona	7,790,128	18,333,881	25.2
Arkansas	23,249	11,960,083	35.6
California	11,588,626	20,440,766	20.3
Colorado	3,757,673	8,229,277	12.3
Idaho	1,320,753	5,575,241	10.5
Iowa	4,383	8,065,645	22.4
Kansas	4,057,683	11,852,352	22.5
Louisiana	1,001,943	12,442,975	43.0
Minnesota	1,905,559	18,327,610	35.7
Missouri	490,705	7,907,727	17.8
Montana	14,739,697	20,703,035	22.1
Nebraska	7,272,623	10,731,334	21.8
Nevada	5,086,603	7,812,269	11.1
New Mexico	3,355,179	16,149,838	20.7
North Dakota	10,697,490	13,861,042	31.1
Oregon	3,656,085	10,688,932	17.3
Utah	2,230,085	9,737,813	18.4
Washington	9,617,384	12,661,855	29.6
Wyoming	5,749,051	10,092,477	17.7
Total	94,355,739	318,233,203	

SUMMARY OF GRANTS TO THE STATES AND RAILROADS (ACRES)

Total of grants to public land states exclusive of Alaska		223,884,994
Grants directly to railroads		94,355,739
Total of grants to public land states and to railroads		318,240,733
Granted as scrip to non-public-land states	5,280,000	
Included in grants to public land states:		
Granted as scrip to public land states whose lands were exhausted	1,500,000	
Granted as scrip to 5 southern public land states	900,000	
Total scrip	7,680,000	

troops and military property. Finally, on December 12, 1945, at a time when the land grant rates were saving the government enormous sums of money and when the railroads, despite their bloated traffic, were being hard pressed to finance maintenance and improvements, Congress provided for the complete end of all land grant rates.[117] One might say that with the repeal of the rate concessions the old Granger-Populist hatred of railroads

[117] 54 Stat. 954 and 59 Stat., Part 1, p. 607.

for their rate structure and their land policies finally passed into limbo.[118]

Summary of Grants

The two preceding tables are useful for the amount and percentage of their land which individual states received for various purposes and the total amount of grants of land for railroads whether given to the states or direct to railroad corporations. (See also App. C.) Western people wanted free lands and railroads about equally and did not recognize that grants for railroads greatly limited the area which would be open to homestead. They cared little whether the lands went directly to the railroads or through the states to companies. State grants had been quickly turned over to railroad companies and the states had made no effort to profit from them. Making grants directly to the railroads sometimes hastened construction. The acreage here given to the states for railroads or directly to the railroads is only the actual amount received. A good many million additional acres were reserved for the railroads for years, were subject to their jurisdiction and not open to settlement, but were ultimately restored to public entry. These withdrawn and reserved lands are not included in the table nor can their acreage be exactly determined.

In addition to this total of lands granted was the 5 percent of the net proceeds from land sales which was given to 24 states and 3 percent which was given to six states. Altogether $20,113,986 was received by the public land states, from the first allotment to Ohio under its Enabling Act of 1802 down to 1966. States profiting most were those early admitted when all or more of their land was open to unrestricted purchasing and before the free lands available under the Homestead Act became a major route to ownership.

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[118] Congressional committees accepted some of the specious arguments of the Association of American Railroads that tended to minimize the importance of the land grants. It is also apparent that the committees having jurisdiction over the two Acts of 1940 and 1945 had little testimony presented to them in support of the plan for requiring the railroads to surrender their unsold lands, though both the Departments did so testify through their representatives. The best summaries of events leading to and the arguments for and against the surrender of the concessions are Charles S. Morgan, "Problems in the Appraisal of the Railroad Land Grants," *Mississippi Valley Historical Review*, XXXIII (December 1946), 443–54, and David M. Ellis, "Railroad Land Grant Rates, 1850–1945," *Journal of Land & Public Utility Economics*, XXI (August 1945), 207–222. Ellis appraises the literature on the question as of the date of his article.

CHAPTER XV

Homesteading, 1862-1882

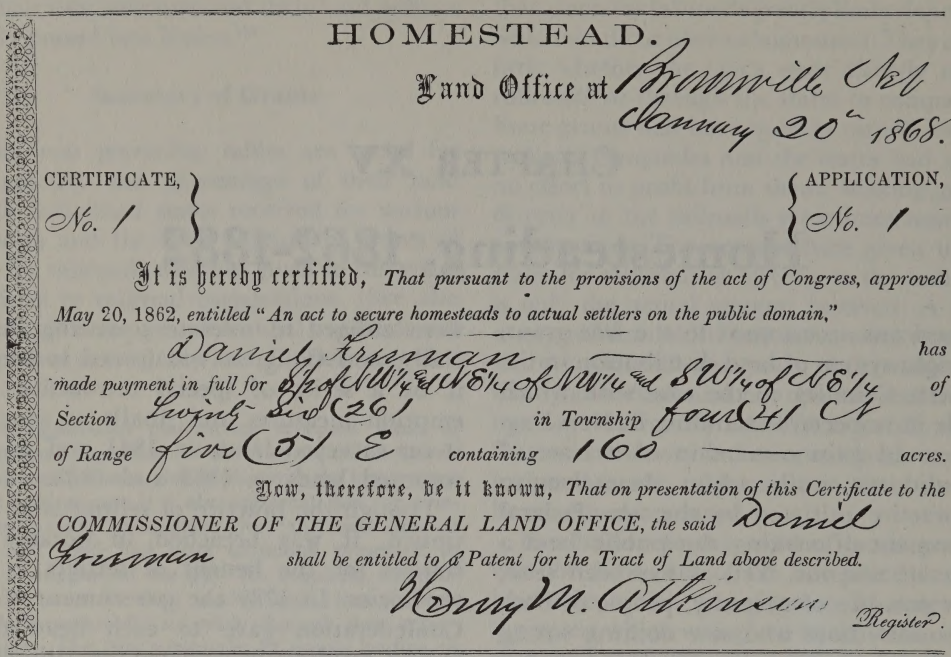
Americans accustomed to the free grant, headright system of land distribution in the southern Colonies or the ease with which people in respectable standing in New England could gain ownership of a tract of land did not easily adjust themselves to the practice initiated by the new Federal government of making the public land a source of revenue. Yet, as has been seen, under pressure of necessity, people of both viewpoints—those who saw nothing wrong with charging a fair price for the lands and those who, like Thomas Jefferson, believed that to charge pioneers for land they were making into productive farms was to levy upon them an unfair, discriminatory and unjust tax—soon agreed that the public lands should be sold, not granted away freely.

Furthermore, because the Federal government was convinced that retirement of the national debt would have to be provided for from the sales of public lands, it could no longer allow settlers and, indeed, land locators and speculators, to push out into the frontier and take possession of land before the government was ready to put it on the market. Neither change was well received by people accustomed, at least in the southern Colonies, to free penetration into public lands to which the Indian title had been ceded. All the power of the new national government was unable to prevent intrusions before the land had been surveyed and proclaimed for sale. Administrative officials, unable to obtain respect for regulations regarded as unjust, were obliged to tolerate squatting unofficially, and Congress was forced to forgive it by a series of special retroactive preemption measures and finally to sanction it on surveyed lands in 1841 and on unsurveyed lands in 1853 and 1862.

Though the practice of selling land continued, it was breached in notable instances for the benefit of settlers in the territories. In 1788 the government of the Confederation gave to each head of a family residing in Indiana or Illinois in 1783, 400 acres of land in addition to land they had previously been allotted. Other persons, who had not received such donations but who were enrolled in the militia on August 1, 1790, were to be given 100 acres.[1] Later, residents of what became the States of Mississippi, Alabama, Louisiana, Arkansas, Missouri, and Michigan who were in possession of, occupying or improving land as of stipulated dates, and who were either heads of families or 21 years of age and who had no other claim to land were entitled to have approved to them up to 640 acres as a donation.[2] While no outright free grants were given residents of Florida having no official claim to land, the commissioners to investigate claims were required to confirm every actual settler's claim which had been recognized by the Spanish Government and

[1] The Ordinance of 1788 was re-enacted on March 3, 1791. 1 Stat. 221.

[2] Acts of March 3, 1802, March 27, 1804, and March 3, 1807, 2 Stat. 229, 303, 437.



HOMESTEAD.

Land Office at Brownville Nebr
January 20th 1868.

CERTIFICATE, No. 1

APPLICATION, No. 1

It is hereby certified, That pursuant to the provisions of the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," Daniel Freeman has made payment in full for Lots No 1 2 E½ of NW¼ and SW¼ of NE¼ of Section Twenty Six (26) in Township Four (4) N of Range Five (5) E containing 160 acres.

Now, therefore, be it known, That on presentation of this Certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Daniel Freeman shall be entitled to a Patent for the Tract of Land above described.

Wm M. Atkinson Register.

Homestead Certificate of Daniel Freeman

Bureau of Land Management

which did not exceed 3,500 acres.[3] Thus far persons having occupancy or improvement claims had been rewarded by the United States with 400 to 640 acres, the maximum being the more common.

Donations Acts

Indian troubles in Florida were responsible for the adoption of the Armed Occupation Act of August 4, 1842, whereby any man capable of bearing arms who made a settlement south of Gainesville, and who resided upon and improved his tract for 5 years should receive title to 160 acres, provided he had not previously been a resident of the territory or did not already own a quarter-section of land. A total of 200,000 acres of land was authorized for distribution under this measure.[4] Thomas H. Blake, Commissioner of the General Land Office, in his report for 1842, said of the Armed Occupation Act: "The National Legislature has thus presented to the enterprising and industrious citizen a strong inducement to seek a home in a country represented to be of good climate and unsurpassed fertility, and affording abundant facilities for obtaining a competency and independence with comparatively little labor." Two years later, despite the danger from Indian depredations, the office could report that 1,048 permits had been granted for settlements covering claims to 167,680 acres.[5]

If the Armed Occupation Act was intended to attract settlers to a danger spot, the Oregon Donation Act of September 27, 1850, was meant both to reward those Americans who had voluntarily, and with-

[3] Act of March 3, 1823, 3 Stat. 754.

[4] 5 Stat. 671.

[5] *S. Doc.*, 27th Cong., 3d sess., Vol. II, No. 10 (Serial No. 414), p. 5; *S. Doc.*, 29th Cong., 1st sess., Vol. III, No. 16 (Serial No. 472), p. 4.



A Kansas Sod Home 1889

Photograph by William H. Griffin, Topographer, U.S. Geological Survey.

out any promise of a land bounty, crossed the plains and mountains to settle in Oregon and also to encourage others to do the same. American white setttlers and half-breed Indians on public lands in Oregon, and persons of other nationalities who indicated their intention of becoming American citizens, who were 18 years of age, and who had resided on and cultivated land for 4 years, were to be granted 320 acres if single, 640 acres if married. White American citizens or other nationals who intended to become American citizens and who arrived in Oregon between December 1, 1850, and December 1, 1853, were promised 160 acres if single, 320 acres if married.[6] The Oregon Donation Act and other applicable measures were extended to Washington Territory by the Organic Act of March 2, 1853.[7] A less generous measure was enacted for the benefit of persons settled in New Mexico before 1858 who were, or stated their intention of becoming, American citizens. They were only allowed 160 acres.[8] The Mormon colony of Utah was under a dark cloud and its residents were offered no bounty for past or future settlement and, indeed, were not to have the benefit of the public land system with its surveys until 1869.

Unlike Oregon, Washington, Florida, and New Mexico, California needed no land bounty to draw population. An added

[6] 9 Stat. 496. A bill to grant 1,000 acres to each white male inhabitant who had lived in Oregon and on the land 5 years was introduced into Congress by Senator Lewis Linn of Missouri in 1841. Later proposals would have granted 640 acres to each head of a family and 160 acres for each child. Charles H. Carey, *A General History of Oregon to 1861* (Portland, Oreg.), pp. 391, 447.

[7] 10 Stat. 177.

[8] 10 Stat. 238.

reason why its landless residents at the time of occupation and those who came in before statehood were not given a bounty was that California was in the doghouse so far as the prevailing political leadership in Congress was concerned. Donaldson summarized the results of efforts to reward and encourage settlement in the territories:

LAND BOUNTIES TO SETTLERS IN THE TERRITORIES[a]

Territory	Number of Bounties	Acres
Florida	1,317	210,720
Oregon	7,317	2,563,752
Washington	985	290,215
New Mexico	332	52,609

[a] *The Public Domain*, p. 969.

All these donation acts were planned to reward or to direct immigrants to certain areas which were out of the way and not likely to attract population as Illinois, Iowa, and California had done in the decade before the Civil War. Southern conservatives could see a distinction between granting land to settlers in these territories where they might help to reduce the Indian menace and granting free lands where no such menace existed.

Move for Land Reform

Meantime, the demand for land reform or free land was becoming louder and more insistent. It started with an intellectual element among labor leaders in the 1830's, blossomed out in the National Land Reform movement, and was joined by western agrarians including western members of Congress. The land reform movement became one of the great issues separating liberals from conservatives, humanitarians from practical business-minded people, the West from the South. It was a part of the ferment of reform in the second quarter of the 19th century that brought about changes in penal laws, introduction of public education, improvements in the care of the indigent, the blind, the insane, personal liberty laws, and the abolition of the slave trade in the District of Columbia, and culminated in the Emancipation Proclamation.

Early leaders of the land reform movement included George Henry Evans, founder of the *Workingman's Advocate* and one of the outstanding and most articulate of the intellectuals working in the labor movement during the years from 1830 to his premature death in 1856; others were Thomas Skidmore, a printer and writer active in the Workingman's Party; and Thomas Ainge Devyr, a political refugee who did much to arouse the tenants on the Van Rensselaer estate in New York to resist forced collection of rents and fight ejectment. Devyr could draw upon his knowledge of the misfortunes which "aristocracy" and landlordism had brought to Ireland in predicting the results that would prevail in America if her land laws were not reformed.[9] These men borrowed ideas from Thomas Jefferson, Tom Paine, and the theory of natural rights. They maintained that every man had a right to a share of the soil, that the public lands belonged to the people and should be freely granted to them in small tracts. They believed that the poverty and privations of the working class and unemployment could

[9] Helene Sara Zahler, *Eastern Workingmen and National Land Policy, 1829–1862* (New York, 1941) *passim;* Davis M. Ellis, *Landlords and Farmers in the Hudson–Mohawk Region, 1790–1850* (Ithaca, N.Y., 1940), *passim.* In the Cornell University Library is a copy of Thomas Ainge Devyr, *The Odd Book of the Nineteen Century or "Chivalry" in Modern Times, A Personal Record of Reform—Chiefly Land Reform for the Last Fifty Years* (New York, 1882), which the author presented to George W. Julian, veteran land reformer of a later period, "in recognition of his devotion to Truth and his exposure of Error and Fraud especially on the great underlying Question of Our Public Lands," with numerous marginalia.

be ameliorated by offering free land in the West to which the poor might go when conditions became intolerable in the industrial centers. Government had an obligation to withhold the public lands for actual settlers only and should freely grant them the land instead of allowing it to be monopolized by capitalists who bought it, not for development, but for resale to the land hungry. The holding of large tracts by speculators or by planters who utilized only small portions of this property constituted "monopoly," a bad word in the lexicon of the land reformers.

In 1844 Evans organized the National Land Reform Association which gained some important converts, including Gerrit Smith, a rich New York landowner and former associate of John Jacob Astor, and Horace Greeley, America's greatest polemical editor and ardent reformer. Greeley is commonly pictured as an erratic, politically ambitious reformer who went from socialism to Whiggery, to Republicanism and finally to Liberal Republicanism and on the way adopted almost every reform no matter how odd it might appear. The Greeley of land reform, however, was no utopian dreamer, no impractical idealist, but a down-to-earth critic who knew far better than most contemporaries what was going on in the West. Greeley employed some of the ablest reporters of the time, read widely in the newspapers of the country, and traveled in the West himself. His trenchant editorials, his own letters when on a western tour and those of his reporters constitute some of the best and most informative accounts of pioneering that we have. Greeley scorned speculators, being as harsh in his criticism of the small man who was trying to control several quarter-sections through the claims association as he was of the land companies and rich eastern investors. Converted to National Reform and to the cause of free homesteads, Greeley became a powerful force in the spread of reform sentiment, especially in the West where his paper was widely read. Six hundred newspapers, it has been said, followed Greeley's *Tribune* in supporting free homesteads.[10]

Land reform, thought Greeley and the National Reformers, would draw westward not only the thousands of Europeans flocking to America and crowding into New York and other industrial centers, but also those residents of hillside farms in New England and New York where the struggle for survival was harsh. It was this reservoir of labor that depressed wages, kept the working day long, jobs insecure, and weakened the barbaining power of labor. The offer of free land would surely draw the redundant workers of the East to the West and give them an opportunity of establishing themselves on productive farms. The "safety valve theory" which Carter Goodrich, Sol Davison, and Fred Shannon were to discard in 1935 and 1936 as a result of a series of intuitive and analytical studies was fundamental to the position of the free land and reform advocates.[11] Greeley said of the attraction free land would have to eastern workingmen:

> Let it be known that all the Public Lands are open to settlement without charge, while the cost in time and money of transportation Westward is constantly diminishing and there would very soon be a current of emigration from the cities and

[10] Roy Marvin Robbins, "Horace Greeley: Land Reform and Unemployment, 1837–1862," *Agricultural History*, VII (January 1933), 18–41; Benjamin H. Hibbard, *History of the Public Land Policies* (Madison, Wis., 1965), pp. 358 ff.

The best biography of Greeley is Glyndon G. Van Deusen, *Horace Greeley, Nineteenth Century Crusader* (Philadelphia, 1953), though it is not strong on the great editor's understanding of western land problems.

[11] The attack upon the safety valve theory is a part of the larger effort to examine the structure and validity of the Turner emphasis upon the significance of the frontier. For mention of some of the more important works and additional bibliographical aids see Ray A. Billington, *America's Frontier Heritage*, pp. 288 ff. and elsewhere.

older States to the free lands which could not fail to stiffen wages and diminish the disproportion between labor and the demand for it all over the Atlantic slope.[12]

Greeley and the National Reformers advocated banning sales to speculators and withholding all arable farmlands for granting in 160-acre tracts as free homesteads to actual settlers. This would, of course, have meant the end of Federal land revenue. But the proportion of Federal income derived from the public lands had already become almost insignificant. Only 6 percent of it was derived from this source on the average during the years 1851 to 1862; from 1859 to 1862 the proportion shrank from 3 percent to 2/10 of 1 percent. To make sure that land accumulation and "monopoly" would not be established, the reformers advocated inalienable homesteads with restrictions on inheritance and provisions for reversion of the land to the government.

Land reform, especially free homesteads, gained converts North and West, with Webster, Seward, Sumner, Douglas, Johnson, Grow, and other leading members of Congress taking it up in one form or other. Petitions calling for free lands rained upon Congress in increasing numbers from northern legislatures and groups of various sorts.[13] The newly organized Republican Party put free lands into its platforms. Northern Democrats, trying to remain loyal to their national leadership dominated by the proslavery element, knew they ought to do likewise but could not; the proslavery wing of their party could not reconcile free lands with slavery and turned their backs on the proposal. New territories moving toward statehood with slavery banned—among them California, Oregon, Nevada, Colorado, Kansas, Nebraska, and Minnesota—threatened the control that Slidell, Davis, and other southerners had hitherto maintained in the Senate. It was in these territories and in the free States of Michigan, Wisconsin, Indiana, Illinois, and Iowa that the great growth of population was occurring. Free homesteads would surely attract even more immigrants from Europe and would upset not only the delicate balance of forces in the Senate but would further increase free state representation in the House. Free lands must be opposed at any cost, even though opposition might mean the displacement of northern Democrats in the Senate and House by "Black Republicans" committed to free lands and asserting the right of the people in the territories to determine for themselves whether or not slavery should exist in them. National Reform spokesmen had converted Greeley and many other leaders who came to associate alleviation of urban poverty, low wages, unemployment, and the social ills of the slums with free lands in the West. The newer advocates of free homesteads, however, were less concerned with fundamentally changing the land system, abandoning sales, and enacting the inalienability and reversion clauses proposed by the reformers. Conservatives in the West like Cyrus Woodman, himself a large dealer in land who accumulated a small fortune from buying government land and reselling to settlers and lumbermen, continued to fear the effects of free lands if and when adopted.[14] However, an increasing number

[12] Lawrence B. Lee, "Kansas and the Homestead Act, 1862–1905" (Ph.D. dissertation, University of Chicago, 1957), p. 32, quoting the *New York Tribune*, May 6, 1852.

[13] Robbins, "Horace Greeley: Land Reform and Unemployment, 1837–1862," pp. 18–41; Hibbard, *History of the Public Land Policies*, pp. 358 ff.

[14] Woodman called the "vote yourself a farm" bill "outrageous in principle and adverse to the best interests of the west. The effect . . . will be to bring in upon us a vile horde of the most worthless class of emigrants, men who will not pay taxes on land after it is given to them and who will steal their living out of those who have bought and paid for their lands. The poorhouses of the east and of all Europe will be emptied upon us. I have not much sympathy for these cattle." He called free lands an "unmitigated humbug. . . ." He denied that his land investments

of westerners, boosters who wanted rapid settlement and development of the land and its resources, felt that free homesteads would give to the West its greatest impulse to growth. Their support of free homesteads was won by the omission of the inalienability and reversion proposals.[15]

George Malcolm Stephenson, Benjamin H. Hibbard, and Roy M. Robbins have traced the discussions in Congress of free homesteads, the increasing support the proposal obtained from newspapers and among members of the House from the northern states, the sectional distribution for and against the various bills, the adoption in 1860 of a compromise measure that land reformers regarded as no homestead act, and its veto by President Buchanan. The bill would have given preemptors 2 additional years in which to pay for their claims, reduced the price to 62.5 cents an acre and granted homesteaders, after 5 years of residence and improvement on odd numbered sections only, the right to buy their quarter-section for 25 cents an acre. Graham Fitch's proposal to raise the price of even numbered sections to $2.50 an acre was rejected. The measure also would have provided that after 30 years of exposure to sale the remaining lands would be ceded to the states in which they were located. Southern Senators, with the help of some northern Democrats like Fitch, had done their best to emasculate the free land measure passed by the House and to make it as unsatisfactory as possible to the land reformers. Few had thought Buchanan would veto it but he did.[16]

Notwithstanding the many precedents of free grants to individuals and to states, Buchanan could find no constitutional authorization for free homesteads. Furthermore, the measure discriminated against the early settlers who had paid for their land in favor of later immigrants; it would do "great injustice" to the veterans by reducing the value of their land warrants; it conferred a boon on western settlers at the expense of all others; it was unjust to the old states whose land values it would depress; it would enable capitalists using dummy entrymen to accumulate large tracts; it conferred unwarranted favors on foreigners; it gave an advantage to existing preemptors as against future preemptors; it would drastically reduce the income from public lands and undermine the "present admirable land system."[17]

Homestead Act of 1862

Buchanan's veto opened the sectional chasm wider, further weakened the Douglas wing of the Democratic Party in the North, and contributed to Lincoln's triumph in November.[18] Victory of the Republicans assured early enactment of a homestead measure more completely in tune with western demands, after the withdrawal of the Deep South, though there

had affected his judgment. Letter of Cyrus Woodman, Mineral Point, Wis., March 31, 1852, to Ben. C. Eastman, M.C., Washington, Woodman Letter Book. Pinkney W. Ellsworth, a partner in land speculation with Moses M. Strong of Wisconsin feared in 1860 that the enactment of a free homestead act would seriously affect his land investments and urged that they be closed out. Letter of Jan. 30, 1860, in Strong *MSS.*, Wisconsin State Historical Society.

[15] George Malcolm Stephenson, *The Political History of the Public Lands from 1840 to 1862: From Preemption to Homestead* (Boston, 1917); Hibbard, *History of the Public Land Policies;* Roy M. Robbins, *Our Landed Heritage. The Public Domain, 1776–1936* (Princeton, 1942).

[16] *Cong. Globe*, 36th Cong., 1st sess., April 4, 5, 9, 1860, pp. 1527-1539, 1551-1556, 1619; *Senate Journal*, 36th Cong., 1st sess. (Serial No. 1022), June 23, 1860, pp. 753– 56. Fitch's proposal to liberalize still further the granting of military warrants to soldiers, teamsters, etc., of past wars was also defeated.

[17] Richardson, *Messages and Papers of the Presidents, 1789–1897* (1900), V:608–614.

[18] Stephenson, *The Political History of the Public Lands from 1840–1862*, pp. 238–39. I have shown something of the significance of the issue in the public land states in my *Fifty Million Acres*, *passim*.

was still opposition from border state Democrats and conservative easterners like Justin Smith Morrill and Roscoe Conklin. Passed by a vote of 105-18 in the House, and 33-7 in the Senate, the measure became law on May 20, 1862, and went into operation on January 1, 1863.

The Homestead Act breathed the spirit of the West, with its optimism, its courage, its generosity and its willingness to do hard work, in contrast to the vetoed measure of 1860 with its niggardliness, its distrust of foreigners, its failure to apply to others than heads of families. The Act of 1862 entitled any persons who were heads of families or 21 years of age, and who were citizens or who had filed a declaration to become a citizen to enter 160 acres of land held at $1.25 an acre or 80 acres held at $2.50 an acre "which may, at the time the application is made, be subject to preemption. . . ."[19] Since Congress had extended the privilege of preemption to unsurveyed lands in California, Oregon, Washington, Kansas, Nebraska, and Minnesota, it might be expected that all unsurveyed lands in these states not otherwise reserved would be subject to the Homestead Act. On June 2, 1862, Congress authorized preemption on all unsurveyed lands to which the Indian title had been extinguished, but since this measure was adopted a few days after the homestead law was enacted and the latter law applied only to lands subject to preemption at the time of its adoption, homesteading was not to be permitted on unsurveyed lands.[20]

As events turned out, homesteading was not conceived of as authorized on any unsurveyed lands, hence the Act of 1862 was more conservative in its operation than the preemption laws of 1853 to 1862. Not until 1880 was homesteading on unsurveyed lands made legal, though it must be added that it did occur since there was no positive prohibition against it.[21]

Although homestead land was free to those who conformed to the residence and improvement requirements of the law, there were fees to be paid, as in most transactions at the public land offices. The original filing fee on 160 acres was $10, a commission of $4 was due when the application was made, and with final proof a further commission of $4 was required. This practice was in line with most services provided by national, state, and local governments. Settlers were allowed 6 months after filing their original application before they were required to reside on the land, during which time they might be working for others or returning East to bring back their families. If residence was not established in that time there was danger that someone else might move on the land and file a contest for the tract. Since droughts, grasshopper plagues, and other catastrophies might intervene between the original filing and the final entry, a full 7 years of occupancy was allowed before there was any danger of cancellation of the entry, unless

[19] 12 Stat. 392.

[20] 12 Stat. 413.

Like most land legislation of the 19th century the Homestead Act was anything but a carefully drafted measure. It declared eligible persons "were entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption . . . to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed. . . ." It was held that "after the same shall have been surveyed" was the controlling clause in the section and therefore unsurveyed land "subject to pre-emption" was not open to homestead. There was nothing in the statute, however, that would prevent a person who had settled upon unsurveyed public land with the intention of preempting it to file a homestead application on it when it was surveyed. Henry N. Copp, *Public Land Laws . . . With the Important Decisions of the Secretary of the Interior, and Commissioner of the General Land Office, the Opinions of the Assistant Attorney General, and the Instructions issued from the General Land Office . . . .* (Washington, 1875), pp. 182, 277.

[21] Act of May 17, 1880, 21 Stat. 141.

there was evidence of abandonment, though settlers could prove up and get title at the end of 5.[22]

Congress attempted to prevent misuse of the homestead law by inserting several requirements in it that were to be strengthened by instructions sent by the Land Office to all registers and receivers. Homesteaders must swear that the land was intended for actual settlement and cultivation and that the entries were not being made for any other person. Five years' residence on the land and cultivation were required before the homesteader could prove up and take title. After 1872 Civil War veterans were permitted to count the time they had been in the service toward the required 5 years but had to put in one full year's residence on the land. Only one homestead could be acquired, but the measure specifically retained the preemption law, thereby making it possible for settlers to acquire both a preemption and a homestead, each for 160 acres, though not at the same time because residence was required on each. Homesteaders who wished to get title to borrow on it or wanted to sell their tracts were permitted to commute their entries to preemption entries, if they had not already taken advantage of the preemption law, by paying the price for which the land was held.

Liberal, forward-looking, and attractive as was the promise of free land under the Act of 1862, it lacked the safeguards the National Reformers had insisted were essential if the public lands were to be saved for actual settlers. It neither took from the President the right to proclaim additional land for sale nor repealed the cash sale law of 1820. Land reformers had tried unsuccessfully in 1858-60 to get Congress to withdraw the public lands from "private entry" so that speculators and other men of capital could no longer anticipate the settler by buying land in unlimited amounts. When the homestead law was enacted there were 83,919,649 acres subject to private entry, and some 15 million acres of additional land in California, Colorado, Washington, and Wisconsin were later ordered into market and opened to unlimited purchase.[23] Included in the areas open to unlimited purchase, either at this time or a decade later after the repeal of the restrictive Southern Homestead Act of 1866, were heavily timbered areas in Wisconsin, Michigan, Minnesota, and Colorado, considerable fair land in the eastern third of Kansas and Nebraska, and all the remaining public lands in the five southern states. If settlers had not established preemption rights in these areas before the sale, speculators and lumber companies were generally able to buy the choice lands their cruisers selected for them at the $1.25 price.

Impractical in an American context as the inalienability proposal of the National Reformers may appear, it offered more promise of preventing abuse of the homestead law than the relatively weak safeguarding features which the law contained. Past experience had shown that westerners had no compunctions about flouting the laws banning agreements to prevent competition at public auctions. They had taken advantage of the preemption and graduation laws contrary to the spirit and the letter of these laws. In giving evidence about land claims many people had perjured themselves. Settlers had "hooked" timber from public lands, ganged up against Federal marshals trying to levy upon stolen timber, packed juries to free the accused, and managed to turn the law

[22] Lee, "Kansas and the Homestead Act," p. 126; Henry N. Copp, *The American Settler's Guide; A Popular Exposition of the Public Land System of the United States* (Washington, 1882), p. 26. The commissions charged in the far western states were somewhat higher.

[23] *GLO Report, 1862*, p. 8; Paul W. Gates, "The Homestead Law in an Incongruous Land System," *American Historical Review*, XLI (July 1936), 660.

against officers trying to protect government property. Yet, in the light of all this past abuse of the public land laws, Congress did not provide any adequate way of assuring that the homestead law would not be subject to many of the same types of misuse.

The homestead law, with its promise of free land to all who would reside upon and make a farm on 160 acres of surveyed public lands, was superimposed upon a public land system with which it was incongruous in many ways. That incongruity was further exaggerated when additional land grants and donations to the states were made with high minimum prices prescribed by law. This, however, was nothing new. Repeatedly, Congress had made major changes in its land laws without considering how they would harmonize with existing measures. (The most marked illustration is the dispute that developed over the priority of swamp and railroad grants.)

At the very time Congress was adopting the homestead law it was granting away between 15 million and 20 million acres by the Pacific Railroad Act and within 9 years' time was to increase the total quantity of grants to railroads to 127 million acres. Since it was expected that these railroad land grants would provide a considerable part, or perhaps all, of the cost of constructing the roads, Congress in effect was requiring that the settlers who bought railroad lands should pay for the cost of construction. Furthermore, Congress on March 6, 1868, raised the minimum price of government-reserved sections to $2.50 an acre and permitted homesteaders to enter only 80 acres of them. This quantity might be sufficient for a successful farm in Ohio but was woefully insufficient in central or western Nebraska. Thus 127 million acres within 50 miles of railroads were closed to homesteading and perhaps half as much was limited to entries too small for economic use.

Another factor limiting the amount of land subject to homesteading was the Federal grants to new states. For example, when Nebraska was admitted in 1867, two sections in each township were given it for public schools in the expectation that the state would endeavor to gain as high a price from selling or renting as the market permitted. The school sections were not subject to homesteading. In addition, 728,000 acres were given Nebraska for internal improvements, public buildings, and miscellaneous purposes; these also were to be sold, not given to settlers. Over 72 million acres were granted to states which entered the Union after 1862 and earlier grants of some of the older states were increased. A total of 140 million acres were in the hands of states for management and sale after 1862. By congressional or state fiat some of these lands were only available to farm makers at relatively high prices, $10 per acre being the minimum for the states entering in 1889-90.

The accompanying table of sales shows the return some of the state lands brought.

STATE LAND SALES[a]

State	Net Amount of Land Sold to 1935	Average Price Per Acre
Idaho (to 1918)	838,140	$16.90
Kansas	3,064,547	3.22
Minnesota	2,306,600	6.53
Montana	1,587,488	15.50
North Dakota	1,686,436	16.73
South Dakota	873,960	35.22
Utah	3,448,876	2.44

[a] Gates, "The Homestead Law in an Incongruous Land System," *American Historical Review*, 41 (July 1936), 659.

Kansas lost many thousands of acres of school land to which it was entitled under its Act of Admission because of the way

the Indian lands were sold; the state was given indemnity lands many years later which had to be entered in western counties as there was no public land available farther east. The 276,000 acres thus allowed were located for the most part in Trego and Ness Counties in the vicinity of the 100th meridian. Many were the complaints of settlers against the location of the indemnity sections in these counties for they reduced the amount of land open to homesteading and compelled settlers wanting land to buy at as high as $3.25 an acre.[24]

Another limitation on the amount of land open to homesteading was the acreage included in the Indian reservations, which amounted to 175 million acres in 1862. Five treaties with Indian tribes authorized the sale of 9,500,000 acres in Kansas to railroads. As has been noted, angry opposition to the secret negotiations leading to these treaties, and the fear that the use of treaty making was threatening the public land system persuaded the Senate not to ratify the Osage treaty for the sale of 8 million acres. However, the Osage land when ultimately ceded was not permitted to become a part of the public domain, subject to homesteading. Instead, it was to be sold for the benefit of the Indians at a minimum of $1.25 an acre. Individual allotments to Indians might and generally did pass quickly to white ownership, but at a price. In 1887 Congress adopted in the Dawes Act a general policy of allotting to individual Indians tracts they were to own in fee simple. In this way the breakup of the remaining reservations was begun. As all previous experience had shown, the Indians were not familiar with individual ownership and quickly lost their allotments. By 1933 the reservations had thus been whittled down to some 50 million acres of the poorest lands but homesteaders seeking free land had no part in this reduction.

Anxious landseekers moving westward after 1862 may well have wondered whether the Homestead Act was the boon it was supposed to be. The 125 million acres of railroad lands, the 140 million acres of state lands, and the 175 million acres of Indian lands were all closed to homesteading. So also were the millions of acres held at high prices by speculators who had bought in the fifties. In every public place advertisements called attention to privately owned land whose advantages were said to surpass those of lands open to homestead. Thus the American Emigrant Company, which had bought the swamplands of a number of Iowa counties, summed up under the caption "Better than a Free Homestead" all the disadvantages of free land: "Under the homestead law the settler must, in order to get a good location, go far out into the wild and unsettled districts, and for many years be deprived of school privileges, churches, mills, bridges, and in fact of all the advantages of society." Landlookers were told by the Burlington and Missouri Railroad in 1878: "You can judge for yourself whether it is not better to purchase land at four or five dollars per acre, on ten years credit, and six percent interest, that is good land and near a railroad, and will quickly advance to twenty-five dollars per acre, rather than go upon the far western or southern plains and homestead land upon which you are never certain of half a crop, and which will never advance in value." [25]

[24] Lee, "Kansas and the Homestead Act," pp. 104–105.

[25] Pamphlet: *Two Thousand Families Wanted for Iowa* (no date, no place); *The Old B & M Railroad Ahead. Keep to the Right Latitude. 750,000 Acres of the Best Lands for Sale. Southern Iowa and Southwestern Nebraska* (1878), p. 24. It was probably more common for the railroads to include information concerning government lands open to homestead without discriminating against them. See *Guide to the Union Pacific R.R. Lands. 12,000,000 Acres Best Farming and Mineral Lands in America* (Omaha, 1870), pp. 29–36.

Immigrants arriving in Kansas, to consider a typical Plains state, between 1868 and 1872 were greeted with advertisements announcing that the choicest lands had been selected by the State Agricultural College which was now offering 90,000 acres for sale on long term credits. The Central Branch of the Union Pacific Railroad offered 1,200,000 acres for prices ranging from $1 to $15 per acre; the Kansas Pacific Railroad offered 5 million acres for $1 to $6 per acre; the Kansas and Neosho Valley Railroad offered 1,500,000 acres at $2 to $8 per acre; the Capital Land Agency of Topeka offered 1 million acres for sale; Van Doren & Havens offered 200,000 acres for $3 to $10 per acre; Hendry & Noyes offered 50,000 acres; and even the United States Government was advertising for bids for 6,000 acres of Sac and Fox Indian lands. During years of active homesteading in Kansas the state was selling its lands for the substantial prices shown in the table.

Sales of Kansas State Lands[a]

	Years of Sales	Acres	Average Price Per Acre
School Lands	1865–82	450,764	$4.00
Agricultural College Lands	1868–82	48,465	4.78
University Lands	1878–82	6,224	2.88
Normal School Lands	1876–82	4,966	4.72

[a] Gates, "The Homestead Law in an Incongruous Land System," pp. 660 ff.

Bleak though the opportunity of homesteading on land not too remote from settlement, markets, and railroads might appear, the prospects were not as unfavorable as this analysis may suggest. The General Land Office estimated the amount of unsold and unappropriated land in the possession of the government, including Indian reservations, at 1,145,000,000 acres in 1867. If there are deducted from this total the 125 million acres reserved for railroads, the 140 million acres granted or to be granted to the states, and the 175 million acres in Indian reservations, there still remained 605 million acres. This amount, of course, included a great deal of mountainous, desert, and other waste land; but it also included a very large part of South Dakota (the only state west of the Mississippi, except Oklahoma, which contained no sizable land grant), 53 percent of Kansas, a large part of the Great Plains and of the Pacific Coast states, 45 million acres in the five southern public land states, and 56 million acres in Missouri, Iowa, Minnesota, Wisconsin, and Michigan.

Unsold and Unappropriated Land[a]
1867

Missouri	1,835,892
Alabama	6,915,081[b]
Mississippi	4,930,893[b]
Louisiana	6,582,841[b]
Michigan	5,180,640
Arkansas	11,757,662[b]
Florida	17,540,374[b]
Iowa	3,113,464
Wisconsin	10,106,700
California	106,062,392
Minnesota	36,776,170
Oregon	52,742,078
Kansas	43,148,876
Nevada	67,090,382
Nebraska	42,523,627
Washington Territory	41,627,464
New Mexico Territory	73,005,192
Utah Territory	51,139,646
Dakota Territory	145,295,284
Colorado Territory	62,870,665
Montana Territory	86,904,605
Arizona Territory	68,855,954
Idaho Territory	54,963,343
Indian Territory	44,154,240

[a] *GLO Annual Report, 1867*, p. 367. All or most of the land was surveyed in the first nine states and was therefore open to homestead entry. In the other states and territories there were still large areas un-

cleared of Indian rights which were not open to either homestead or preemption entry. Railroad and state grants not received or located in 1867 were to come out of these figures. The estimates of land in California and Dakota Territory are much too high.

[b] Open only to homestead entry.

There was considerable land open to entry in Kansas east of the 97th meridian when the homestead law was adopted. This was increased by 145,000 acres offered the following year. However, this offered land was quickly snapped up by speculators using the agricultural college scrip. At the previous rate of growth one could have expected the frontier to advance swiftly in ensuing years to the 99th meridian, beyond the point where ordinary farming techniques would work well and where larger farm units might be needed. It was questionable whether the 160-acre homestead unit was suited to the dryer portions of the Great Plains. The movement for closing all offered land to unlimited purchasing had been strong, though unsuccessful in 1862, but if it had succeeded and if the preemption law had been repealed, the 160-acre unit would have been the basic size for farms as settlement moved westward, so far as government policy was concerned. The retention of preemption after 1862 assured more flexibility in the land system.

Congress was averse to making the land system rigid by eliminating preemption, closing out all cash sales, and making homesteading the only route to ownership. In the Homestead Act it had made careful provision to safeguard all existing preemption rights, by allowing those who prior to the adoption of the act had filed a declaratory application for a preemption to retain that right and also to gain a homestead right, or to change a preemption claim into a homestead. Thereafter settlers could gain ownership of 320 acres by entering land in both ways. A final step that shows how strongly committed Congress was to continuing both the preemption and homestead privileges was its action in throwing open to preemption all public lands to which the Indian title had been extinguished.[26] Unfortunately, preemption entries continued to appear on the tract books as cash sales and without detailed examination of them it is impossible to determine what proportion of cash sales were in fact preemption entries.

In later years the Commissioners of the General Land Office came to believe that the part of the land system most subject to abuse was the Preemption Act of 1841. It produced a huge number of contested cases that kept officials constantly busy hearing appeals, reading reports of investigating agents, and rendering decisions. Land lawyers and members of Congress frequently intervened in cases, asking for reconsideration and reversal of decisions and carrying appeals to the Commissioner, the Secretary of the Interior, and to the courts. But despite the enormous number of contests and disputed cases to which it gave rise, Congress had no intention of repealing preemption which had now been on the statute books for many years.

Timber Culture Act

Congress was not content for long to limit entries of land to homestead and preemption claims. In 1873 it adopted the Timber Culture Act allowing settlers a third quarter-section if they would plant 40 acres in trees and cultivate them. Residence was not required on the tract, as it was on both preemption and homestead claims, so settlers could have two claims proceeding toward title at the same time. Ten years, later 8, were required for final proof. Subsequent amendments reduced the number of acres to 10 required to be planted in trees, and eased the path to ownership. The purpose of the act was

[26] *Cong. Globe*, 37th Cong., 2d sess., April 17, May 29, 1862, pp. 1711, 2432, 2439.

really threefold: to get groves of trees growing in the hope that they would affect the weather and bring more rainfall, to provide a source of fencing, fuel wood, and building materials in the future, and to provide another method by which land could be acquired in areas where larger units than the usual 160 acres seemed necessary.

Once a settler had filed a timber culture entry, he could control the tract for 13 years before it lapsed for nonfulfillment, and if the land officers had not observed the failure of the entryman to prove up the period might be longer. Other settlers, however, might contest the entry thereafter. During this time the entryman had the use of the land without being subject to any taxes on it; more important, he could hold it for himself or other members of his family who might later wish to preempt or homestead it, or he could sell a relinquishment. Here was its chief value, for though the sale of relinquishments was contrary to law, the business flourished and provided a small but significant return to early comers enabling them to make a better start on their other claim or claims. It was the prospect of selling a relinquishment that induced many pioneers in new territories to file timber culture claims and it was the business in relinquishments that explains why such a small proportion of the original timber culture claims never went to patent. There were 290,278 entries for 43,500,000 acres, most of them in Kansas, Nebraska, and Dakota Territory, of which only 10,866,888 acres went to patent. The balance was either relinquished or cancelled.[27]

This is not to say that the Timber Culture Act was not productive of tree growth on the Plains nor that many settlers did not acquire title to the extra 160 acres. Timber was needed for various purposes and the evidence indicates that settlers did set out trees and try to tend them for a time; recent research has revealed that some groves did survive.[28] It also appears that some settlers gained title to their timber culture claim, which, with a preemption

[27] Herbert S. Schell, *History of South Dakota* (Lincoln, Nebr., 1961), p. 179; Fred A. Shannon, *The Farmer's Last Frontier, Agriculture, 1860–1897* (New York, 1945), p. 59; William F. Raney, "The Timber Culture Acts," Mississippi Valley Historical Association, *Proceedings*, Vol. 10, 1918–21, pp. 219–29. I have taken the acreage of final entries, including the commuted entries, from Hibbard, *History of the Public Land Policies*, p. 422. Copp, *The American Settler's Guide*, pp. 69–75, is useful here.

One of the least studied features of the western land business is the sale of relinquishments, which is touched upon in this work in a number of places. Sufficient evidence has come forth from widely scattered sources to suggest that the cost of farm making and the average settler's lack of capital were among the factors inducing settlers to resort to methods of holding surplus claims for a time until the pressure for land made it possible to sell them and thus to provide the necessary funds for making and stocking their farms. Evidences of this tendency to control more land than an ordinary settler could ever expect to develop may be seen in the early claims associations which sometimes allowed settlers to "occupy" 320 or 480 acres and the entries of both homestead and preemption tracts and later of timber culture tracts. By claiming and later selling such surplus tracts many pioneers managed to accumulate sufficient funds to make successful farms in a lifetime or less, though they may have started with little or nothing. A recent writer missed the importance of the sale of relinquishments and seems to have concluded that the 43-percent failure of settlers to gain ownership of entries they had made in Nebraska caused "agonizing heartbreak" rather than providing them with funds for improvements. Homer Socolofsky, "Success and Failure in Nebraska Homesteading," *Agricultural History*, 63 (April 1968), 103 ff., also seems to have misunderstood the thrust of my article on "The Homestead Law in an Incongruous Land System," which was not intended to display homestead as a failure but as a statute whose operations were less successful than previous writers had indicated because it was embedded in a land system whose basic feature of providing revenue from land purchasers was inharmonious with a free land policy.

[28] Everett Dick, *The Sod-House Frontier, 1854–1890* (New York, 1937), is excellent on pioneer life on the plains.

and a homestead claim, gave each of them 480 acres.

That many could not have taken the obligations of the law very seriously seems evident, and one may well wonder how a pioneer attempting to establish a farm on the bleak prairie could afford to divide his time between two or even three quarter-sections though they might be adjacent. Building a sod hut, digging a well, preparing land for the first crop, providing a fuel supply for the long winter, caring for any livestock the farm maker had, exchanging labor with others engaged in the same tasks, and trying to raise a few dollars to pay filing fees and buy essential items surely left little time to set out trees and carry water to them.

Desert Land Act

By 1877 Congress was convinced that further relaxation of the land system was advisable to adapt it to the use of people trying to create homesteads in the arid and semi-arid regions of the West. Where it was possible to divert streams or to build small reservoirs the lower lying arid lands might be made productive through irrigation. Any such activity would require either group action and the ability to raise considerable capital or, for smaller projects financed by individuals, control of larger units of land than the entry laws then permitted. A number of proposals were considered in Congress. Extensive land grants to companies, similar to the railroad land grants, which were then in bad odor, won little support. Most support was given a plan that was first tried as an experiment in Lassen County, California. In 1875 Congress authorized individuals in Lassen County—an extremely dry region east of the Sierras—to file plans for irrigating up to 640 acres of nontimbered, nonmineral land not producing grass and to enter it on payment of 25 cents an acre. If they could offer proof within 2 years that they had reclaimed the land for irrigation they were to take title on payment of an additional $1 an acre.[29] Two years later Congress voted to extend the same sale plan, somewhat modified, to California, Oregon, and Nevada and to the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota. A 3-year period was authorized between the filing of the original declaration and the completion of the entry with proof of improvements. The law required that the tracts were to be in compact form.[30] Like the Timber Culture Act, this Desert Land Act, as it was called, was abused from the outset by cattlemen and other groups anxious to gain ownership of water rights. The act is not to be compared with the Homestead Act in the number of entries. Even so, 159,704 entries for 32,803,914 acres of desert land, and 46,999 final entries for 8,645,479 acres indicate that many tried but few succeeded in fulfilling the requirements of the Desert Land Act.[31]

Postwar Farm Making

Despite the destruction caused by the Civil War and the absorption of large elements of the population in that struggle for 4 years, the number of farms in the United States increased by 615,908 or 23 percent, in the sixties. Yet between January 1, 1863, when homestead applications were first accepted, and 1870, only 142,210 applications for homesteads were filed. In Illinois, where no homestead land remained and where land values were high, 59,463 new farms were created whereas the maximum number of homestead filings in any state or territory during the sixties was 25,753.

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[29] Act of March 3, 1875, 18 Stat. 497.
[30] Act of March 3, 1877, 19 Stat. 377.
[31] *GLO Annual Report, 1932*, p. 42.

FARMS AND HOMESTEADS IN THE 1860's

State	Number of Farms Added	Number of Homestead Entries
Illinois	57,493	7
Missouri	55,536	13,235
Iowa	55,129	7,337
Michigan	33,364	12,221
Wisconsin	33,634	10,379
Indiana	29,463	2
Minnesota	28,319	25,573
Kansas	27,802	13,178
Nebraska	9,512	16,037
Total	330,252	97,969

Compiled from GLO *Reports* and *Historical Statistics.*

The accompanying table is included to show that the majority of new farms were not being created by homesteaders on public land. A far larger number of people were making farms on land that had long since passed out of Federal hands and was being sold by railroads, states, and above all by the speculator-investors who had purchased large quantities of land before the Panic of 1857. Indubitably, the filing of so many homestead entries during the war and the years immediately afterwards is a noteworthy accomplishment, but its importance pales in comparison with the number of new farms created. Evidently more people preferred to establish farms on high-priced land nearer transportation and markets.

In the 1870's, 1,348,985 new farms were created and there were 318,572 homestead entries; in the eighties there were 555,734 new farms and 477,052 homestead entries.

Before taking up a detailed examination of the actual operation of the homestead law, reference should be made to the fact that the number of homesteads filed correlates fairly well with the fluctuations of the business cycle and of immigration from abroad, falling when business was depressed and immigration declined, and rising when business improved and immigration reached new highs. However, note in the table the lack of correlation in 1878 and 1879.

NUMBER OF IMMIGRANTS AND OF ORIGINAL HOMESTEAD ENTRIES

Year	Immigrants	Homestead Entries
1863	176,282	8,223
1864	193,418	9,405
1865	248,120	8,924
1866	318,568	15,355
1867	315,722	16,957
1868	138,840	23,746
1869	352,768	25,628
1870	487,203	33,972
1871	321,350	39,768
1872	404,806	38,742
1873	459,803	31,561
1874	313,339	29,126
1875	227,498	20,668
1876	169,986	25,104
1877	141,857	18,075
1878	138,469	35,630
1879	177,826	41,005
1880	457,257	47,293
1881	669,341	36,999
1882	788,992	45,331
1883	603,322	56,565
1884	518,592	55,045
1885	295,346	50,877
1886	334,203	61,638
1887	490,109	52,028
1888	646,889	46,236
1889	444,427	32,089
1890	455,302	40,244

Compiled from GLO *Reports* and *Historical Statistics.*

How did the Homestead Act actually work as part of a land system which still permitted unlimited purchasing in many areas? Did settlers or speculators get the worthwhile land? And if they succeeded in entering land, what proportion of the entrymen gained patents and retained their land thereafter? In answering these questions we have only a few intensive studies of limited areas to rely on.

It seems best to consider homesteading first in offered areas where the lands had been open to purchase for some years by settlers and speculators. Lands in Michigan, Wisconsin, Missouri, and Iowa had been open to entry for 5 to 10 or more years; those in the Central Valley of California and eastern Kansas and Nebraska, for approximately 3 years. Altogether some 54 million acres were open to homestead, preemption or cash entry in these areas in 1863. This acreage was equivalent to all the entries that went into homestead from 1863 to 1879 in the entire country. Settlers, landlookers, small and large investors had worked over these areas searching for the better lands and discarding from their lists those that were remote from timber, lacked easy access to water, were rough, broken, or seemingly infertile. Sometimes they made bad guesses. After the process of selection had left few tracts unentered, newcomers preferred to go into other and more recently opened areas where they hoped to find better land.

I have estimated that of some 1,180,000 acres of offered lands in the eastern third of Kansas that remained unsold in 1862, 400,000 acres were thereafter acquired in amounts of 2,000 acres and more with cash, scrip, and warrants. The balance of 780,000 may have been entered under the homestead or preemption laws. Generally, the large entrymen got in first and had their choice.[32]

In Nebraska 8,663,000 acres, or roughly one-sixth of the state, had been offered before the Homestead Act went into effect and approximately 1,050,000 acres had been entered with cash or warrants. Of the remainder of the offered land, a part was granted to railroads, possibly 2,500,000 acres, leaving 5,108,000 acres subject to homestead or cash entry. During the first 8 years homesteaders filed on 1,879,401 acres and for a short time had their pick of the land. Then in 1867-73 speculators and estate builders entered 400,000 acres of what seems to have been the best land remaining available. Two of these large purchasers—William Scully and the Brown-Ives-Goddard group of Providence, Rhode Island—acquired 148,000 acres which they developed into the largest and most stable landlord estates in the United States.[33]

Studies of two Nebraska counties (Pierce and Gage) throw considerable light on early homesteading in an area where all the land had been open to cash entry except one tier of townships in Pierce. In this county west of the Missouri and east of the 98th meridian, the eastern 12 of the 16 townships had been offered at public sale in August 1860. Not an acre was sold then or for many years thereafter, showing how

[32] Lawrence Lee has shown that in a band of 21 townships extending from the Missouri River to the western boundaries of Morris County in Kansas a total of 27,320 acres were homesteaded or 1,301 acres, on the average, per township. All these townships, plus the next four tiers farther west had been offered. If we apply that same average of 1,301 acres to the 600 townships in the eastern third, we have 780,000 acres.

[33] The Scully and Brown–Ives–Goddard (now the Brown Land Company) estates should be equated with the somewhat smaller Wadsworth estate in the Genesee Valley of New York which has been in existence 177 years. Russell LaVerne Berry has much recent information on the ownership and management of the Scully lands in Illinois, Kansas, and Nebraska, especially in Marion County, Kansas, and some on the Brown Land Company operations in northeastern Nebraska in "The Scully Estate and Its Cash-Leasing System in the Midwest" (Brookings, S. Dak., mimeographed, 1966). Scully added substantially to his purchases of government land by buying largely from private owners. The extensive western land and lending operations of the Davenport family of Bath, N.Y., have been traced in Allan Bogue, *Money at Interest*. Unfortunately, access to the Brown–Ives–Goddard manuscripts, of which I am told there are great chests full in the John Carter Brown Library, were denied. James B. Hedges, who was making a detailed study of the commercial operations of the family and published one volume, *The Browns of Providence Plantations Colonial Years* (Cambridge, Mass., 1952), had his second volume well along toward completion at the time of his death.

absurd had been President Buchanan's action in ordering this land into market long before settlers or speculators were interested in a region so far west. There were 33,760 acres of state land in the county and the Burlington and Missouri Railroad had 15,720 acres, selected by 1872. Homesteaders were slow to move into the county, the first entry being filed October 1, 1867. A few scattered homestead filings were made in 1868 but the next year 4,160 acres were taken up. Unfortunately, the author of the Pierce County study was not careful to distinguish between original and final entries under both the Homestead Act and the Timber Culture Act and it is not possible to sift through his data to separate the two. Also, he relies partly on acreage and partly on number of entries. He seems to have found that in a county where not an acre had been sold, although offered before 1862, 22 percent of the land available was patented to entrymen under the Homestead Act or its commutation provision, 7 percent was patented under the Timber Culture Act, and 4 percent under the Preemption Act. In other words 33 percent of the land was patented under the settlement laws. Though the first homestead entry was filed in 1867 only 103 had been filed by 1873 but by then purchasers had acquired with scrip, warrants, and cash 170,000 acres or the equivalent of 1,092 homesteads. What is most interesting is the data on the number of relinquishments and cancellations. There were 675 cancellations and relinquishments which may be taken as evidence of the extent of the land business, the buying and selling of land, more than anything else. On 222 tracts there was one cancellation or relinquishment, on 118 there were two, on 42 there were three, on 14 there were four, on three there were five, on one there were six, and on two there were seven.[34] The data suggest that many sold relinquishments to raise money for other purchases, that the cancellations may have been required by abandonment of claims, and that many people were filing homestead, preemption, and timber culture claims with the plan of selling one or more.

If homesteaders overlooked the possibilities of Pierce County in 1870-72, speculators and land developers did not. In the offered sections—the three eastern tiers—individuals and partnerships bought, in amounts of 1,000 acres or more, 107,620 acres out of the total 276,480 acres available. Depreciated land warrants and agricultural college scrip was used to enter 45,760 acres and the balance was bought for cash. Some of this land was purchased by the Brown-Ives-Goddard group and some by Ira Davenport, one of the most successful speculators and moneylenders in the West. Davenport entered 9,200 acres in Pierce County and 8,160 acres in nearby Wayne County and with his brother and two sons held a total of 65,000 acres, all in Nebraska.[35] The Brown-Ives-Goddard hold-

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[34] John Arnett Caylor, "The Disposition of the Public Domain in Pierce County, Nebraska" (Ph.D. dissertation, University of Nebraska, 1951), pp. 36–37.

[35] The senior Ira Davenport was an inveterate speculator and moneylender whose far flung operations ranged from his home in Bath, New York, into Michigan, Illinois, and Nebraska and were among the largest of which there are records. The first evidence I have of his buying public land is in 1836 when he entered for cash 785 acres in the Kalamazoo Land Office of Michigan, only to have 625 acres suspended for a technicality. In the fifties he and his brother John were actively entering land in the Detroit and Duncan Land Offices, the total of entries being 17,252 acres. Ira also entered 2,540 acres in the Genesee office. In 1871 and 1872 Ira located 16,949 acres in the Dakota Land Office in Nebraska and large purchases from the Union Pacific and the Burlington and Missouri Railroads brought his Nebraska holdings to 65,000 acres. In addition he purchased with John M. Longyear, a well-known landlooker of the Upper Peninsula of

ings in Pierce County were 25,200 acres. One may guess that most of the 148,600 acres entered in Pierce with scrip, warrants, or cash between 1868 and 1873 was acquired by others than small farm makers.[36] After examining the soil types of Pierce County and the location of the entries of the estate developers and speculators, and comparing them with the location of the homesteaders and others entering land under the Timber Culture Act and the Preemption Acts, John Caylor, the author of the Pierce County study, found that an overwhelming proportion of the best and most fertile land was acquired by the former group. Fifty-nine percent of the cash and scrip entries were located on soil type 1, whereas only 23 percent of the settlers' claims were located on this soil type; 76 percent of the cash and scrip entries were located on the two best soil types whereas 50 percent of the settlers' claims were on these soil types.[37] By getting in early the men of capital were able to select land of better quality on the average. Many of their large estates, Caylor shows, were held for 10 years or more. Pierce County had 27.4 percent of its farms tenant operated in 1890, 40.7 percent in 1900, whereas in the state as a whole percentages were 24.7 and 36.9. The percentage of tenancy in Pierce County was, however, well below that of Nuckolls and Gage Counties where most of the Scully lands were located.[38]

Michigan, 34,000 acres in that region. Allan Bogue, *Money at Interest*, pp. 9–75.

[36] The statistics in this paragraph are from Caylor, "The Disposition of the Public Domain in Pierce County, Nebraska," *passim.*

[37] Caylor, p. 27. Caylor brings out that one of the fringe benefits officers of the B. & M. Railroad enjoyed was that of purchasing a quantity of land at a low price for individual speculation.

[38] Caylor, p. 56. I have compiled the percentages from the agricultural volumes of the *U.S. Censuses for 1880, 1890,* and *1900.*

PROPORTION OF FARMS TENANT OPERATED

	1880	1890	1900
Nebraska	18.1	24.7	36.9
Gage County	23.7	38.0	49.3
Nuckolls County	20.0	39.4	49.8
Pierce County	7.1	27.4	40.7

From *U.S. Censuses,* 1880, 1890, 1900.

Homesteading in Gage County, which is 108 miles farther south and 48 miles farther east than Pierce County has been investigated by Yasuo Okada. His study throws additional light on this area where land had been offered at public sale in 1859 and 1860. In three Gage townships that were intensively studied less than a thousand acres had been entered before the Homestead Act was adopted. Homesteaders early began filtering into Gage County, before speculators had picked over the more likely tracts. The first application was filed on January 1, 1863, by Daniel Freeman; it was one of a dozen or more firsts in as many land districts, but his was named the official first and the Homestead National Monument was later erected on the Freeman Tract. The homesteaders selected the highly productive bottomlands along the streams and never had occasion to regret their choice for in this instance they secured the best land. In five townships of 107,914 acres (excluding state selections) homesteaders entered and ultimately secured title to 17,022 acres between 1863 and 1870. Their percentage of the lands in the five townships was 25. Until 1867 their choice was wide but in that year appeared a group of speculators who quickly grabbed up 53,577 acres with low-priced agricultural college scrip. This virtually halted homesteading except in one township where the land had been withdrawn for railroad selection. When the railroad selections had been made and the reserved lands released from the withdrawal order they were

promptly taken by homesteaders, except for some scattered fragments.

Out of the large speculative holdings there emerged, either through resale to substantial capitalists or through development by the original purchasers, one nonresident landlord estate of 22,288 acres and a number of one to two thousand-acre estates.[39] One may conclude from the study of Gage County that settlers had done fairly well both in the selection of land in the early years and in the breakup and resale of some of the large speculative estates, at least in comparison with some other areas, notably Pierce County. Yet a local historian and former register of the Beatrice Land Office in Gage County deplored the great Scully estate which he blamed on the Scrip Act of 1862.[40]

> A moment's reflection will show the striking contrast between the beneficent influence of the free-homestead law and the effects of the agricultural-college act, not only in the early settlement and development of our county but in existing and future conditions. The one operated as a gift from heaven, descending upon an independent, self-respecting and industrious population; the other forms the basis of nearly every large landed fortune in the county. Without it, there would have been no such individual domain as the Scully estate, and the problem of landlordism in Gage county would be scarcely worth considering.

We have further information concerning settlers and the homestead law in Gage County. Of 616 homesteads that were carried to title 440 were for 160 acres, 33 for 120 acres, 136 for 80 acres and 7 for 40 acres. Most of the 80-acre homesteads were located within the primary grant area of the Burlington Railroad where one could only file for a half-quarter. In the six townships specially studied, 286 original homesteads were entered of which 82 or 28.7 percent were cancelled, 11.2 percent were commuted, and 60.1 percent were carried to the final entry and patent. By townships the cancelled homesteads ranged from 15.9 percent to 41.2 percent, the commuted homesteads from 4.7 to 17.4 percent, and the final homesteads from 47 to 69.8 percent. Since Gage County homesteaders who commuted did not mortgage their property after acquiring title, it is assumed that they paid for their land instead of waiting until they could acquire it free in order to sell, perhaps to buy a preemption claim or to gain ownership of a timber culture claim. Similarly, the cancellations were in effect relinquishments for which the original entryman could get a number of hundred dollars in the more excited periods of the demand for land. Settlers delayed in proving up on their homesteads and taking title in order to postpone the day when they would have to pay taxes. Of all homesteaders gaining title in three townships 37 occurred in 5 years, 44 in 6 years, and 59 in 7 years. In Blakely Township, in which there were 41 final homesteads, 13 families either acquired additional homesteads in

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[39] The location of the Scully lands in Gage and Nuckolls County may be seen in Addison E. Sheldon, *Land Systems and Land Policies in Nebraska* ("Publications of the Nebraska State Historical Society," Vol. XXII, Lincoln, Nebr., 1936), pp. 320–23. For the purchases of Scully see Gates, *Frontier Landlords and Pioneer Tenants* (Ithaca, N.Y., 1945), p. 40.

[40] One of the most useful studies of the operation of the public land system within a limited area, particularly with reference to the homestead law is the manuscript "Public Land Disposal, Land Tenure, and Rural Economy in Gage County, Nebraska," by Yasuo Okada, from which I have borrowed heavily. Sheldon, *Land Systems and Land Policies in Nebraska*, pp. 88–90.

Extensive acquisitions of land by nonresidents and nondevelopers aroused indignation among public officials of Nebraska who felt that if the Homestead Act were to be meaningful the lands should be reserved for actual settlers. Governor Alvin Saunders expressed this view in 1866 in urging the Nebraska Legislature to petition Congress to prohibit sales for any other purpose than actual settlement. His successor went even farther, urging the legislature to request of Congress that it authorize no more warrants or land scrip for any purpose, no matter how worthy, and that all public lands be reserved for homestead save such as were given the states in which they were located. Efforts to halt public sales and to reserve all remaining public lands for actual settlers are dealt with in the Chapter XVI.

the name of children, brothers, or fathers, or gained title through preemption or cash purchase, thus providing them with land they could either mortgage or sell for additional capital improvements. The 13 families acquired an average of 327 acres beyond their 160-acre homestead. Interestingly, the Freeman family secured title to 840 acres through purchase with scrip, warrants, and cash, making their total acquisitions 1,000 acres, which, may be thought of as scarcely typical of the good fortune of homesteaders.[41]

Harrison Township in Hall County—90 miles west of Gage, 42 west of Pierce, and only 16 miles east of the 99th meridian—offers other evidence of the working of the settlement laws in the 1870's. There was no offered land in the county and like Pierce and Gage it had numerous railroad selections. The first settlement in the township was made in 1871 but it was not until the following year that any homestead and preemption claims were entered. Seventy entries of 10,241 acres were filed in 1872 covering all the public lands the railroads had not selected. Of these 70 entries 14 were preemptions and 56 were homesteads. A student of the township's history says that a number of homesteaders were "well-to-do speculators"—apparently cattle ranchers—while a number of preemptors who would have to pay for their land at the end of a year were without funds. Three men relinquished their preemptions to take homesteads on the same tracts, four relinquished their preemptions to take timber culture claims on the same land, and four relinquished probably for a consideration. It is startling to note the number of relinquishments that were made on the same tracts; on one quarter-section 10 successful entries and nine relinquishments were filed. The turnover of claims was high in the early years as shown by the fact that of 86 entries of public land 60 by 1892 were either relinquished or sold. Given as causes of the high turnover are the ravages of grasshoppers, the frequency of droughts and other unfavorable crop conditions (14), the desire to sell when offered a good price for claims or titles (19), the wish of people who had made good to move to better farms (16), and the need to start anew elsewhere aided by the income derived from the sale of claims (7).

A number of points stand out in this analysis of Harrison Township. A combination of homestead with preemption or timber culture claim or purchase of a 40- or 80-acre tract from the Union Pacific Railroad would provide a farm of adequate size as settlers approached the area of less than 20 inches of rainfall. The rate of failure to get title to homestead and preemption entries was high but not the rate of failure to profit from the sale of relinquishments or of land. Grasshopper plagues and droughts speeded up the turnover of land and contributed to halting immigration and stimulating the movement of population outward. Ownership was attained by many, though in numerous cases with the aid of mortgages, first chattel and then land. Tenancy appeared early.[42]

Needing more study by writers on railroad land policies is the challenging data concerning the correlation within this single township between settlers owning farms established on government land having few mortgages, low per-acre mortgage debt, and generally favorable economic status, and two other classes: the first bought from the Union Pacific and the second bought from other parties, but both

[41] Okada, "Public Land Disposal," pp. 62 ff.

[42] One hundred and six persons who had claims or owned land in Harrison at one time had sold and removed by 1902, 10 had retained their holdings but were nonresident, 74 were resident and owners. Arthur F. Bentley, "The Condition of the Western Farmer as Illustrated by the Economic History of a Nebraska Township," (*Johns Hopkins University Studies in Historical and Political Science*, Eleventh Series, Nos. VII–VIII, Baltimore, 1893), *passim*.

had many more farms mortgaged, higher per-acre debts and less favorable economic conditions in descending order for the two classes. The data shows within this limited area the advantage of either entering or buying land from the government in preference to purchasing from the railroad or from private owners.[43]

Kinsley Township in Edwards County, Kansas, for which we also have a detailed analysis of original and final land entries and sales of railroad lands, lies 20 miles west of the 99th meridian. None of the land had been offered. The first homestead entries were made in 1872, the last in 1898, but most of them were made before 1880. In this township 196 entries were filed for homesteads, preemption and timber culture claims, of which 102 were carried to successful completion; 67 were homesteads, 20 were preemption claims, 11 were timber culture claims, and four were commuted homesteads. Ninety-one individuals obtained title to these 102 tracts of land, 11 of them obtaining homesteads and either preemption or timber culture claims as well. But these same 91 successful entrymen also lost or failed to carry to completion 25 other entries they had filed. Sixty-seven individuals, or 41 percent of all who had made entries, gained ownership of no Federal land in the township. Ninety-five percent of the uncompleted entries were relinquished, which ordinarily meant that they had been sold to later comers, thereby providing the original entryman with funds to return East if he was too discouraged to remain or, more likely, to commence anew elsewhere with a little more capital. Of the 110 settlers buying land of the Santa Fe Railroad, 61 were successful in completing payment and getting title. As with Federal entries, assignments of contracts were not uncommon.[44] The most important statistic that is lacking in these data for Edwards County is the return the entrymen received for their relinquishments. Did those selling relinquishments go on to make other entries elsewhere, perhaps under names other than their own? What proportion of them ultimately became owners of farms? We do not know.

Despite its remoteness from well established areas and its unfavorable reputation for inadequate rainfall Dakota Territory early began to attract settlers looking for free land. Actually, a strip in the northern half of the territory just west of the Red River and a tract in the southeastern corner, amounting to more than a fourth of what became South Dakota, receives 20 inches of rainfall on the average while a small corner of the territory between the Missouri River and the Minnesota boundary is in the 25-inch belt. None of the land in the territory had been offered before 1862; hence speculators could only accumulate land by buying from land grant railroads or from private owners who acquired homestead, preemption, or timber culture claims.

In the first 6 months of 1863, 75 people filed homestead entries on 11,829 acres in Dakota Territory. Thereafter the number of homesteaders filing on land increased rapidly until 1880 when the territory exceeded all other states and territories in the amount of land taken up by homesteaders. From the outset some settlers preferred to preempt land, as the table shows, or, knowing that they could not maintain both homestead and preemption claims simultaneously, first entered their preemption claim, which took less time to carry to title, and when they had proved up on it filed on a homestead claim.

[43] *Ibid.*, pp. 67–68.

[44] Allan G. Bogue, "Farmer Debtors in Pioneer Kinsley," *Kansas Historical Quarterly*, XX (May 1952), 84–87.

NUMBER AND ACREAGE OF LAND ENTRIES IN DAKOTA TERRITORY

	Homesteads				Preemption Entries		Timber Culture Entries	
	Original		Final					
	Number	Acres	Number	Acres	Number	Acres	Number	Acres
1863	75	11,829						
1864	111	17,669						
1865	64	10,107						
1866	154	23,676				1,680		
1867	187	29,545				4,088		
1868	614	96,869	29	4,602		9,764		
1869	523	67,978	28	4,391		14,566		
1870	576	90,546	20	3,200		37,398		
1871	761	98,783	33	5,199		21,986		
1872	1,009	157,237	73	11,448		5,977		
1873	1,297	205,920	160	27,208		19,752	29	3,560
1874	1,778	288,162	371	54,326		55,478	805	129,997
1875	812	119,306	407	62,342		26,703	451	61,969
1876	1,629	239,179	653	90,922		23,467	842	119,835
1877	828	123,779	563	88,003		20,336	476	68,266
1878	4,885	739,606	845	122,153		58,587	3,769	579,804
1879	5,688	864,855	1,136	162,999		58,027	4,675	728,687
1880	8,613	1,326,945	1,147	159,650		62,797	5,575	868,949
1881	8,873	1,386,872	911	135,728	1,798	274,206	5,133	868,400
1882	14,156	2,208,268	1,430	210,087	5,128	795,445	9,368	1,466,529
1883	22,061	3,437,386	1,735	264,843	9,509	1,484,623	11,199	1,755,419
1884	14,086	2,161,267	2,559	397,817	13,728	2,136,673	11,179	1,748,640
1885	7,854	1,218,478	3,493	548,031	7,781	1,191,316	8,499	1,328,966

Compiled from Donaldson, *Public Domain,* and "Report of the Public Land Commission," *S. Doc.* 59th Cong., 3d Sess. Vol. IV, No. 189 (Serial No. 4766).

Between 1863 and 1869, 1,728 homesteads were entered and some 200 preemptions were filed. Included in the 1,728 tracts were 289,123 acres. The Census of 1870 shows 1,720 farms containing 279,771 acres. The correlation is fairly close, suggesting that in this beginning period the land was being acquired by homesteaders and preemptors for farms. The fact that the average size of farms was only 3 acres over a quarter-section may well be taken as indicating that larger homestead units were not essential in the belt of 20- to 25-inch rainfall.

By 1880, 29,704 original homestead entries for 4,547,859 acres had been made in Dakota; 5,465 homesteads for 796,447 acres had gone to final entry. But if we allow for the 5-year lag between original and final entries we find 15,593 of the 29,704 entries had been patented by 1885. Since homestead land became taxable when the final entry had been made, and such land was almost the only source of taxes, as the railroads were extremely slow in taking title and rendering their lands taxable, there was reason for the settlers to delay as long as possible in filing their final entries. John Ise—whose delightful recollections of pioneering in Osborne County, Kansas, are one of the most useful sources for historians of homesteading—in telling about his father proving up on his claim in 1879, says: "He might have done this two or three years earlier, but delayed as long as he could, because when he got his title he had to begin paying taxes on his land."[45] In addition to the 29,704 original homesteads, an acreage equal to 2,645 quarter-section preemptions had been purchased, bringing the two types of entries to 32,349. Not to be disregarded were the 17,617 entries of timber culture claims. The annual reports of the Northern Pacific Railroad, whose land grant across what is now North Dakota amounted to over 9 million acres, offer little information as to sales before 1880, though we do know that considerable quantities of land were taken in the Red River Valley in exchange for goods and were being developed as bonanza farms.[46]

Despite all the homestead and preemption entries and the uncertain number of farms created on land acquired from the railroad, the Census of 1880 shows only 17,435 farms containing an average of 223 acres each. The reasons for this disparity seem to be: (1) some original homestead entries were relinquished (sold to others) or abandoned and entered again; (2) some homesteaders acquired a preemption either before or after they filed for a homestead; (3) some homesteaders had made such slight improvements as to be passed over by the census taker or were absent when he made his visit; (4) some homesteaders may have bought adjacent land of the railroad.

The bonanza farms with their huge acreages—one farm alone contained 38,000 acres—account for the high average size of Dakota farms at this early period. By 1878 an increasing number of homesteaders were commuting their entries at the end of 6 months from the original entry, paying $1.25 an acre and gaining title. Also a growing number were relinquishing their claims for a payment that might aid them in getting started again elsewhere and permit them to carry their entries to title.

As early as 1871 the traffic in relinquishments and the sale of claims had become so common as to attract the attention of William H. H. Beadle, surveyor general, located at Yankton, Dakota Territory. Beadle reported that men with some means coming into the territory found it easy to pick up relinquishments or patent titles which they were holding unused for the

[45] John Ise, *Sod and Stubble: The Story of a Kansas Homestead* (New York, 1936), p. 81.

[46] Harold E. Briggs, *Frontiers of the Northwest. A History of the Upper Mississippi Valley* (New York, 1940), pp. 509 ff.

time, for a rise in price. Claims sold at $50 to $100 over the government price and, if the practice continued, Beadle warned, the amount of speculatively owned land in the vicinity of the growing towns might become as large and as serious a deterrent to growth as were the entries of speculators on offered land elsewhere in the West.[47]

In Minnesota, only 8 percent of the land had been offered before 1862 and, consequently, speculative monopolization was substantially less than in Iowa and Wisconsin; thus the state was certain to attract settlers when the Homestead Act went into operation. For 6 years Minnesota led all the states and territories in the number of homestead entries and in 1865 provided 44 percent of the total entries for the country. Fifty-nine percent of the entries made between 1863 and 1870 were carried to final entry by 1875; 64 percent of the entries made between 1863 and 1875 were carried to final entry by 1880; and 62 percent of those made between 1863 and 1880 were carried to final entry by 1885. The variation in success may be attributed to Indian troubles, weather, crop and economic conditions.[48]

ORIGINAL AND FINAL HOMESTEAD ENTRIES AND FARMS IN MINNESOTA[a]

Total Original Entries and Acreage Since 1863			Total Final Entries Since 1863	Total Land Sales Since 1863	Total Farms
Year	Number	Acres		Acres	
1850	----------			1,605	157
1860	----------			6,489,442	18,181
1870	25,663	3,158,726	3,860	9,021,085	46,500
1880	62,379	7,295,215	27,818	10,068,309	154,008

[a] It is unfortunate that we do not have statistics of the amount of land sales by the railroads and the State of Minnesota whose combined holdings were more than 20 million acres or one-fifth of the state.

Compiled from Donaldson, *Public Domain*.

Notwithstanding the active homesteading we must conclude that a larger number of farms was developed in Minnesota to 1880 through preemption and from sales of land than had been acquired originally by speculators with cash, scrip, and warrants, or by railroads.

Elsewhere, i.e., in Michigan, Wisconsin, Iowa, and Missouri, we can be fairly sure that most homestead entries were made by people anxious to get land for farming. Since most of the public land had already been offered and was open to unlimited purchase with scrip, warrants, or cash, there was no reason for persons to enter timberland under the Homestead Act, under which it would have taken 5 years to obtain patent or at least 6 months to commute.[49]

[47] *Land Office Report, 1871*, p. 115.

[48] Donaldson, *The Public Domain*, pp. 351–55, and 1016, gives the number of entries and acreage by states from 1863 to 1882; the acreage of entries may be found in the annual reports of the Land Office thereafter.

[49] All public land suitable for farming, in Michigan and indeed all in the lower peninsula, had been offered for sale by 1854, as Dallas Jones has shown in "The Survey and Sale of the Public Lands in Michigan, 1815–1862" (Master's thesis, Cornell University, 1952), maps on pp. 40 and 41 and text on pp. 31 ff. Elsewhere in Wisconsin, Minnesota, Colorado, and New Mexico it was the practice of

(Cont. on p. 412)

MINNESOTA HOMESTEAD ENTRIES

Year	Original	Final
1863	2,299	----
1864	3,258	----
1865	3,972	----
1866	3,789	----
1867	2,985	----
1868	2,946	913
1869	3,389	1,344
1870	3,025	1,603
1871	3,899	1,453
1872	3,908	1,493
1873	3,299	2,124
1874	2,959	2,871
1875	2,463	3,368
1876	2,664	3,203
1877	1,678	2,401
1878	4,986	2,645
1879	5,669	2,485
1880	5,191	1,915
1881	----	1,742
1882	----	2,050
1883	----	2,279
1884	----	2,409
1885	----	2,739

Compiled from Donaldson, *Public Domain,* and "Report of the Public Land Commission."

The great abuse of the law was centered in unoffered areas where only through settlement laws (homestead, preemption, and timber culture) could tracts be acquired. In each of these states large amounts of railroad, state, and speculator-owned land were being sold and made into farms, but homesteads were contributing, though in a smaller way, to the new farms being created. The percentage of original homestead entries to 1880 that were completed by 1885 is as follows: Michigan, 51; Wisconsin, 63.2; Iowa, 60; Missouri, 46.

In California where land monopoly or concentration of ownership almost unexampled for the United States was being established in the midst of a burgeoning population, the scramble for land of all kinds, arable, irrigable, or timbered, was intense. The six or seven hundred owners of inflated Mexican land claims containing 8,850,000 acres of the choicest valley land were but slowly breaking up their tracts while numerous new ownerships of even larger size were being created by the reckless buying of offered lands on which Congress had refused to place limitations. A large part of the nearly 5 million acres were bought in great chunks by speculators. Furthermore, the state swamplands which included much of the best land in the San Joaquin and Sacramento Valleys, and the state college and school lands which Congress had permitted the state to select from tracts not open to cash or warrant entry, were swept up by the same parties. As Gerald Nash has shown, the breakdown of California's administrative machinery, the prevalence of corruption, and the poor drafting of legislation were responsible for the fact that most of the school lands, internal improvement land, and swamplands went into the hands of speculators and politicians, not farmers. With the better part of the confirmed claims, the offered lands and state lands in the possession of individuals and groups of capitalists holding for a rise in value, it is easy to understand why Henry George found California an ideal region in which to develop his single tax concept. It is also understandable why, with the pressure on the land supply, the people should resort to the homestead and preemption laws to gain title in the rapidly growing state whether their object was to gain ownership of land for farms, ranching, or timbering. When the machinery of surveying could not keep ahead of demand people were quite willing to pay for the cost of surveying, as the law allowed, when they wished to anticipate the official surveyor. Also understandable, in view of the pressure for land, is the fact that a higher proportion of those making original homestead entries carried

the General Land Office in the sixties and early seventies to offer such timberland as was in demand.

Homestead Entries and New Farms

Year	Totals of Original Entries Since 1863				Total Number of Farms			
	Michigan	Wisconsin	Iowa	Missouri	Michigan	Wisconsin	Iowa	Missouri
1860	----------				62,422	69,270	63,163	92,792
1870	12,221	10,379	7,337	15,235	98,786	102,904	116,292	148,328
1880	25,086	23,500	13,905	24,701	154,008	134,322	185,351	215,575

Compiled from Donaldson, *Public Domain,* and *Census Reports.*

their entries to patent, the figure for entries before 1880 being 63 percent by 1885, which was a higher rate of success than was achieved in any other state.[50]

Testimony before the Public Land Commission in 1879 reflected on the pressure for California lands. Sometimes five or six applications were filed in the Sacramento office for the same tract and a majority of the tracts were applied for by more than one person. The register reported that the majority of the settlers first applied for preemptions, proved up and paid their $200, and then entered a homestead. Timber culture entries were made only to hold land until it could be entered under the homestead law. The register thought a single 160-acre tract would be insufficient for farming in California and did not favor the repeal of the preemption law as some critics of the land laws did.[51] It is true that elsewhere in the testimony presented to the Public Land Commission, whose work will be discussed below, there is abundant information concerning the use of preemption and homestead privileges to gain control of timberlands, but that does not invalidate the view of the register that through these two laws actual settlers in California were getting title to land in amounts considered necessary for farming.

In the five southern states of Alabama, Arkansas, Florida, Louisiana, and Mississippi, public land sales were not resumed after the conclusion of the war and the 47,700,000 acres were held for homesteaders only, in 80-acre tracts until 1868, and thereafter in 160-acre tracts. It was hoped by land reformers that these lands, together with others forfeited because of the owners' part in the Rebellion, would enable the freedmen and poor whites to become small independent landed proprietors. They misjudged the character of the unsold public lands which had been open to unlimited purchase for many years and tracts suitable for cotton, sugarcane, or general farming had been sold. What was left was refuse lands which had not attracted buyers at the graduated prices, and the longleaf pine land made up of unpromising sandy soil near the Gulf. Such timber as cypress, hardwoods, or easily accessible pine had been stripped off those tracts near navigable streams. In an era when the government was making efforts to protect its remaining timber, loggers might file a homestead entry on a tract, cut what they wanted and then abandon it. Such people doubtless constituted a portion of the homesteaders on these unpromising lands. That the land was to offer little possibility for the re-

[50] Here and elsewhere I have calculated the percentage of success by dividing the total number of original entries for the years from 1863 to 1880 into the total of final entries, as in Donaldson, *The Public Domain*, p. 355, and *Homesteads*, issued by the Bureau of Land Management.

[51] Testimony of Edward F. Taylor, Register, "Report of the Public Lands Commission," *H. Ex. Doc.*, 46th Cong., 2d sess., Vol. 22, No. 46 (Serial No. 1923), p. 213–17.

habilitation of the freedmen quickly became apparent. General O. O. Howard, head of the Freedmen's Bureau, said in 1870 that some 4,000 families had "acquired homes of their own and commenced work with energy building houses and planting" on these lands but there is little evidence of the Homestead Act bringing much opportunity to either the blacks or the whites, as knowing southerners could probably have predicted in 1866.

Between 1866 and 1876, 68,607 homestead entries for 6,310,538 acres were filed in the five southern states. If the rate had been continued and the entries carried to completion, this would have closed out the public lands in less than 8 years. But the rate was delusive as the table indicates.

Homestead Entries in Five Southern States

	Alabama	Arkansas	Florida	Louisiana	Mississippi
Acreage of Original Homestead Entries, 1866–76	1,547,203	2,368,122	947,010	711,683	736,520
Acreage of Final Homestead Entries, 1872–81	445,252	1,045,380	261,977	243,996	184,784
Percentage of Acreage Proved up in 5 Years	28%	44%	27%	34%	25%
Number, Original Entries to 1876	16,288	26,395	10,675	6,452	8,797
Number, Final Entries to 1881	4,343	10,807	2,543	2,001	1,915
Average Size in Acres	102	96	103	121	96

From Donaldson, *Public Domain.*

The repeal of the Southern Homestead Act in 1876 and the restoration of the remaining public lands to "offered" status brought no rush of purchasers until 1881 by which time northern lumbermen were becoming interested in the southern pine. Thereafter, though the timberland was subject to purchase at $1.25 an acre complaints were frequent that local people were making constant encroachment on the land and that homestead applications were used to protect the guilty if they were detected.

Acreage in Farms[a]

Year	Alabama	Arkansas	Florida	Louisiana	Mississippi
1860	19,104,545	9,573,706	2,920,228	9,298,576	15,839,684
1870	14,961,178	7,587,296	2,373,541	7,025,817	13,121,113
1880	18,855,334	12,061,547	3,297,324	8,273,506	15,855,462

[a] Eleventh Census of the United States, 1890, *Reports on the Statistics of Agriculture,* pp. 92, 100.

The Census report of land in farms for 1880, as compared with 1860, offers no support for the view that Federal policy was encouraging the enlargement of the acreage in farms in Alabama, Mississippi, and Louisiana but in Florida and Arkansas the acreage was substantially greater in 1880. By 1890 the acreage of land in farms reflected more directly the further homesteading shown in the following table.

FINAL HOMESTEAD ENTRIES IN SOUTHERN STATES

Year	Alabama	Arkansas	Florida	Louisiana	Mississippi
1871	----------	11	----------	----------	----------
1872	20	72	23	9	9
1873	62	211	32	5	162
1874	150	828	443	38	162
1875	442	1,344	336	177	162
1876	906	1,963	273	256	211
1877	610	1,735	171	352	192
1878	584	1,808	216	406	386
1879	544	987	214	334	309
1880	399	986	271	197	95
1881	626	862	564	227	227
1882	884	755	762	187	179
1883	1,066	1,118	767	185	288
1884	1,217	1,281	593	178	278
1885	1,416	1,350	505	240	350
1886	1,575	1,572	471	162	428
1887	1,562	1,941	382	252	559
1888	1,548	1,841	821	249	603
1889	1,496	1,604	626	638	800
1890	1,665	1,606	971	719	300

Compiled from Donaldson, *Public Domain,* and "Report of the Public Lands Commission."

The Lure of Land

Contemporary critics of western development on what Turner called "the cutting edge of the frontier" rarely failed to comment on the alluring prospects of profit making in land, which both drew people to the area of cheap or free land and drove them to try to engross two, three, or more quarter-sections. Their object might be quick sale to later comers, holding it for other members of their family, or even developing the land, though few could expect to make enough out of farming to enable them to break, fence, seed, and stock so much acreage.[52] Without seriously compromising themselves they could get ownership of a preemption quarter in a year, could commute a homestead entry in 6 additional months, and could make a timber culture entry for which they could easily sell a relinquishment if they needed the capital to develop their first two quarters.

If their first 160-acre tract proved all they could manage they could easily find a purchaser for their other quarter, or if they had a member of their family coming along who would shortly need a farm it could be saved for him. The number of land entries

[52] John Ise maintained that "very many" people filing on preemption and homestead claims "did not go west with the purpose of farming, but merely wished to get title to a piece of land." A homesteader in Kansas in 1877 wrote home of the three choices he had for gaining title: "We took out homesteads directly. We might have 'filed' on the land, and that filing preemption would have been good for 30 months, at the end of which time (or before) we could have bought the land or put a homestead on it. As it is, we must live on it five years. The first two years we live 'off and on'—that is, we must sleep on it once in a while and make some improvements on it within 6 months, or it will be forfeited. It is to be our home, but we can hire out by the day or month as we like." The three choices were, of course, preemption, homestead, and timber culture.

John Ise, *Sod-House Days Letters from a Kansas Homesteader, 1877–1878* (New York, 1937), pp. 19, 40 f.

being made were thus much more than the number of farms being made, at least for a decade or more to come. Though the homesteader was a petty capitalist intruding himself between the government and the man who was to develop the extra quarter, increasing the latter's costs, and dissipating population over a wide area, he may have been providing himself with the capital necessary to make a success of his agricultural operations. He may also have been responsible for bringing to his area friends or relatives for whom he was holding the extra section. When he swore that he was not making the extra entry for others he was committing perjury but his crime, if crime it was, was commonly done and was not as harmful as if he were making his entries for a cattleman, a timber baron, or a large capitalist estate builder.

The oft-repeated criticism of farmers holding too much land for their capital resources applied almost everywhere but particularly in newly developing areas where it might take a family a generation to bring land into high production and provide themselves with proper improvements. A glance at the statistics of the size of farms in Kansas in 1880 shows 1,169 farms with 500 to 1,000 acres and 235 with over a thousand acres, although the classification of 500 to 1,000 acres is not very meaningful. The average size of farms in 1880 ranged from 139 acres (75 percent improved) in Miami County in eastern Kansas, to 207 acres (8 percent improved) in Wallace County in western Kansas. It hardly needs to be said that farms in the more western counties were more recently established and the occupants had less time to bring them into cultivation.

PERCENTAGE OF IMPROVED LAND IN FARMS AND AVERAGE SIZE OF FARMS IN ROW OF COUNTIES EXTENDING WESTWARD FROM THE MISSOURI LINE TO THE COLORADO BORDER, 1880

County	Percentage of Improved Land	Average Size of Farms
Miami	75	139
Franklin	70	124
Osage	64	130
Lyon	60	124
Chase	50	167
Dickinson	65	168
Saline	54	160
Ellsworth	36	172
Russell	29	183
Ellis	23	187
Trego	13	219
Gove	12	213
Wallace	8	207

Computed from data in *Tenth Census of the United States, Agriculture,* pp. 52–53, 115–116.

The practice of commuting homesteads to acquire a quick title, though with the payment of $200 for a quarter-section, did not become sufficiently general to warrant attention in land statistics or in the comments of the Commissioner of the General Land Office in his annual reports until after 1880. This negative evidence, together with the continued favorable and widely expounded views concerning the functioning of the land system, suggests that in these better days of homesteading Congress had hit upon a combination of legislation that provided more than adequately for the needs of settlers; it also suggests that abuse of the legislation was less serious than the success in making it possible for the man with little capital to get started on the road to farm ownership. Between 1863 and 1880, 469,782 applications were filed for 55,667,044 acres under the Homestead Act; 162,237 original entries had been carried to the final entry when the occupants proved up on their tracts. Five years later, the period in which the original entry (if all went well) ripened into final entry, 54 percent of the homesteaders had completed all requirements for titles to their tracts. These 257,385 final homesteads represent more than one-sixth of all the farms in 24 states and territories in which active homesteading was under

way.[53] There is a fairly close correlation between the number of final homesteads in the newer territories in 1885 and the number of farms found by the census takers in 1880.

HOMESTEADS AND FARMS IN NEWER TERRITORIES

State or Territory	Total of Final Homesteads in 1885	Number of Farms in 1880
Dakota	15,583	17,435
Idaho	1,323	1,885
Colorado	4,804	4,506
Montana	1,094	1,519
Utah	3,231	9,452
Washington	5,499	6,529
Nevada	292	1,404

From BLM, *Homesteads,* and *Tenth Census of the United States.*

The growing number of immigrants and the increasing quantity of capital flowing westward in the late seventies and eighties created a period of economic prosperity and coincided with the third great rush to acquire a stake in the public lands. During the years 1875-79 the number of immigrants averaged 171,107; in 1882 it jumped to a new high of 788,992, and averaged 605,519 for the years 1880 and 1884. Thereafter the incoming tide slackened somewhat but not until 1894 and 1895 did the number fall below 300,000.[54] Although an increasing proportion of the newer immigrants took employment in industry, enough of them sought out homes in the frontier West, along with continued migration of older American stock, to send values spiraling upward, and to stimulate the rapid transfer of public lands to private ownership.[55]

No Timberland Policy

In the haphazard development of land legislation Congress had never devised a policy for timberlands. Instead, it had allowed all laws such as cash sale, warrant, and scrip entry, preemption, graduation, and homestead to apply to them as to all other lands when offered. As long as the forests covered potentially useful farmlands this is understandable, but by the 1850's the pineries in the Lake States and in the eighties the longleaf pine lands in the Deep South, which were generally of little use for farming, were being bought by lumbermen and dealers in timberlands. Some cut on the public lands with impunity, but in the fifties and again when Carl Schurz was Secretary of the Interior during the Hayes administration, an effort was made to prevent timber hooking, although not altogether successfully. Most of the land could be acquired, if surveyed, with warrants or scrip at no more than $1 an acre, and if not surveyed, it was easy enough to hire men to file preemption or homestead claims on the desired tracts and to prove up or commute at the end of 6 months and get title. Costs were still low.

For some years after the adoption of the Homestead Act, timberlands in Minnesota, Wisconsin, Colorado, Oregon, and Washington continued to be offered and were open to unrestricted entry. The growing anti-monopoly feeling in the West, however, discouraged administrators from con-

[53] If we deduct the farms in existence in 1860 from the total for the states in which there was active homesteading, in 1880, we have 979,866 farms created after 1860 of which 26 percent may have been homesteads.

[54] *Historical Statistics of the United States* (Washington, 1960), pp. 56–57.

[55] Folke Dovring examined in a restricted form the role of the Homestead Act in inducing European emigration to America in "European Reactions to the Homestead Act," *Journal of Economic History,* XXII (December 1962), 461–72. More detailed examination of letters written from the United States in the years after 1862 is needed before the role of the homestead law is so minimized in explaining decisions to emigrate.

tinuing to offer lands. Timberlands were not open to cash purchase in the South before 1876, and huge areas in California, Idaho, Oregon, Washington, and part of Minnesota being unoffered, were never open to unrestricted entry. Consequently speculators in timberlands had to find other means to acquire tracts that contained heavy stands of the white pine of Minnesota, the redwood and sugar pine of California, or the Douglas-fir of Oregon. The only way to acquire large tracts of timberland in these areas was to abuse the settlement laws. Private ownership of some of the choicest of the redwood lands in California, which conservationists and recreation leaders are now trying to include in a national park, was achieved, said the Public Land Commission of 1879, through misuse of the settlement laws in the 1870's. Members of the Commission visited the redwood region "and saw little huts or kennels built of 'shakes' that were totally unfit for human habitations, and always had been, which were the sole improvements made under the homestead and pre-emption laws, and by means of which large areas of red-wood forests, possessing great value, had been taken under pretenses of settlement and cultivation which were the purest fictions, never having any real existence in fact, but of which 'due proof' had been made under the laws." [56]

Officials of the General Land Office ascribed more chicanery, more misuse, to the preemption law than to any other public land laws prior to 1880. We have seen how critical they were of it in relation to entries in the years before the Civil War, especially in Louisiana. It has also been seen that Land Commissioner Burdett had little use for the Act of 1841 and the amendments which extended its provisions to unsurveyed lands. In 1874 Burdett tried to convince Congress that "pine and fir lands" should no longer be subject to homestead and preemption and that they should be appraised and proclaimed for sale at not less than their appraised value. In the light of the quality of the appointments then being made by the Land Office and the ease with which appointees were influenced by special interests, one may well wonder whether a system of classification and appraisal of timberlands at that time would have improved the existing system. Burdett suggested land classification again in 1875, some years before a better known and somewhat broader proposal was made by Major John L. Powell.[57] In his report of 1875 Burdett called preemption "an obsolete Law" that opened the way to the frauds "by which the choicest of the lands are gathered into the hands of a few, to be held for prices far above that fixed upon them by the Government." "Large tracts of coal lands—valleys and streams which control the values of large tracts of surrounding country—are continually gathered into the hands of a few persons, who are able to employ agents willing to make the pretense of settlement, on which they can justify to themselves the false affidavits requisite to the success of their frauds. Since the discontinuance of the system of offering lands at public sale, the pre-emption system has become, and is now, peculiarly the *speculators'* law as contradistinguished from the *settlers.*"[58]

Generally associated with the complaints and criticisms of the various abusive practices was the suggestion of the Commissioners that the lands, whether timber, mineral, or grazing should be sold in large tracts.

Some observers thought of the fraudulent use of the land laws, like the degrading use

[56] *GLO Annual Report, 1874*, pp. 6–7, and *GLO Annual Report, 1875*, pp. 9–11.

[57] "Report of the Public Lands Commission," *H. Ex. Doc.*, 46th Cong., 2d sess., Vol. 22, No. 46 (Serial No. 1923), p. xxxii.

[58] S. S. Burdett first presented this judgment in a communication to the Senate Committee on Public Lands, and included it in his *Annual Report, 1875*, p. 17.

of "reconstruction" for political ends or the frauds associated with the gilded age, as all part of the letdown from the moral crusade against slavery and the fight for the preservation of the Union. Others, more realistic, knew that the abuse of the land legislation for selfish purposes, by people at every level, was not new. American history had been punctured with scandals relating to the public lands: the Yazoo frauds, the land speculations of officers of the pet banks, the many defaults of western land officers, the dismissal of Governor Reeder of Kansas for using his office to locate the territorial capital where he had land investments, the grab of the Kansas Indian reservations, and many other instances which A. M. Sakolski took pleasure in detailing in his *Great American Land Bubble*. The chief difference between these scandals and the misuse and gradual breakdown of the land system after the Civil War was that it was no longer people of influence who were responsible. Instead, many ordinary people (one hesitates to say all westerners) were showing a willingness to perjure themselves when testifying on land matters.[59]

Powell's Report on the Lands of the Arid Region

Landseekers were approaching the 100th meridian beyond which rainfall averaged less than 20 inches, grain crops were uncertain, and grazing homesteads of large size seemed to be required instead of the usual 160-acre homestead of the humid area. Commissioner Burdett had seen the need for larger units when, in 1875, he recommended the revival of unlimited sales in the semi-arid regions to enable livestock interests to legally acquire the acreage necessary for their operations.[60] One hundred and sixty,. 320, even 480 acres—the most that could be acquired in unoffered areas—might be quite insufficient for grazing homesteads. Burdett's suggestion had gotten nowhere for he did not sense the strength of public suspicion that enlargement of the land unit would only serve to accelerate the "monopolization" of the public lands. A land system that was well suited to the area east of the 99th meridian, at least for farming purposes, was too inflexible in regions where cropping was inadvisable and only grazing could succeed. Burdett and Major John W. Powell, whose geological survey of the Colorado River Basin had brought him fame, were anxious to adjust the system to the best uses of the arid lands and thus reduce the premium on fraud.

Powell and the National Academy of Sciences also wanted to bring together in one unit in the Department of the Interior the four western geological and topographical surveys then partly under the War Department and partly under Interior. At this point Powell, who had completed a detailed investigation of the functioning of the public land system, presented to J. A. Williamson and through him to Carl Schurz, Secretary of the Interior in the Cabinet of Rutherford B. Hayes, his famous "Report on the Lands of the Arid Region of the United States." Powell's report is important because for the first time a man of considerable scientific attainment, whose major geological and topographical work had been centered in the Interior Basin, particularly Utah and the watershed

[59] I am aware that George Washington and many other Federalists were much troubled about the extensive squatting upon public lands in the 1780's and later, contrary to Federal law, which they regarded as serious crimes. There may be only a matter of degree between the violation of the anti-intrusion laws the West regarded as bad law, and the action of settlers in 1880 in perjuring themselves in the oath they took that they were not entering the land for others, but I feel the latter wrong was much the greater. The strict moralist could not bring himself to do the latter but it was easy for him to resist a law that all frontiersmen thought bad.

[60] *GLO Annual Report, 1875*, pp. 6–9.

of the Colorado River, attempted to draft plans for future government policy toward the remaining public lands. He was convinced that outside the five southern public land states, and possibly the coastal states, the government had nothing left that was suitable for ordinary humid or semi-humid farming but scattered tracts and that new policies should be adopted for the arid lands beyond the 100th meridian, if they were to be made productive. Powell recommended that land be classified and disposed of according to its best use. Low lying lands beyond the 100th meridian where water was available might be irrigated, and such irrigable lands should be disposed of in small tracts of no more than 80 acres. Back of the streams where water was not available, the land was only suitable, he believed, for pasture and should be subject to entry in amounts no smaller than 2,560 acres. At higher elevations in the mountains were great stands of commercial timber. These timbered lands should be sold to lumbermen and woodsmen who should control them and establish fire protection over them. Powell was no advocate of government control and development of these resources but saw the need for cooperative management and development of the irrigable and pasture land, and felt that fencing should not be required on the latter.

Powell's major error was in discounting too heavily the capacity of the region beyond the 100th meridian and east of the mountains to produce grain, particularly wheat. It was this portion of the four States of Kansas, Nebraska, North and South Dakota where, after 1878, there were to be so many homesteads established—homesteads which reached final entry. Here also are some of the great wheat-producing counties. One-third of the winter wheat of Kansas in 1949 was produced in counties wholly or partly west of the 100th meridian. In more than 60 years of adapting the farm pattern in North and South Dakota, Nebraska, and Kansas to weather and soil conditions there were in 1950 only five of the 319 counties where the average size of farm units was 2,560 acres and those five were in the sand hills of Nebraska. Powell did not seem to realize that allowing a 2,560-acre homestead for grazing would make possible the establishment of great agricultural units through illegal procedures and his measure provided no safeguards to prevent such properties from being accumulated. Nor was he sensitive to the anti-monopoly movement in the West which, as has been seen, was trying to prevent the establishment of large estates through the adoption of rigid restrictions on the amount of land individuals could acquire from the government and which a little later was to lead to the passage of laws in some states denying aliens the right to hold land because they had been accumulating extensive properties. Powell's emphasis upon irrigation and water rights was excellent though somewhat in advance of public opinion and, indeed, of the need for irrigated land. His insistence on private ownership of the timber resources ignored European success with state forests, something that was to follow in this country. Classification was an unwelcome proposal to many who felt that under the existing system they had a better opportunity of obtaining valuable national resources than under one calling for classification in advance of disposal.

Inaccurate and Fraudulent Surveys

Not only did the public land need classification, it needed to be surveyed under better supervision than had been established. From the initiation of public surveys responsibility had been placed in the hands of surveyors general who contracted out to private individuals the running of the lines, establishment of corners, and

preparation of maps and plats. By 1877 there were 16 surveyors general, mostly political appointees having some knowledge of law but little of the science of surveying and indeed little experience in the field. Their appropriations permitted the appointment of numerous clerks—one office had 40—and the awarding of substantial and apparently lucrative surveying contracts, if we may judge by the scramble for the patronage. But the private contractors constantly complained that the pay was too small. To make a profit, they maintained, they had to skimp and neglect the prescription for their work drawn up by the Land Office. Many of the surveys were done carelessly, some indeed fraudulently, and were inaccurately marked only by perishable or easily removed corners such as blazes on trees, wooden stakes lightly driven into the soil, or small mounds of earth raked upon the prairie. Cattle tramped down mounds of earth and Indians pulled up the stakes for fuel. In Utah the Mormons were said to have plowed up the mounds and resurveyed the land into 5- and 10-acre lots. A California surveyor told the Public Land Commission, "The surveys on the east side of the Santa Clara Valley are wretchedly done. I have yet to find a single line that measures a mile accurately, and have yet to find the first corner-stone. . . . I have known men whose work demonstrated that they were not fit to be employed as deputy surveyors." Another California surveyor declared that as long as the contract system was used the surveys would not be faithfully done. He reported cases where lines were from a quarter to a full mile from meeting, that surveyors' notes did not report forests, and that for many townships in which only a little work was done full pay was exacted. Supervision of the surveys and maps and plats was wholly inadequate to prevent widespread frauds. Months or years after the original surveys, when landlookers could find no evidence of corners or learned that the lines had been inaccurately run, the Land Office had to order resurveys, sometimes three or four times.

Such surveys left in their wake a host of problems for the Land Office. The compensation for surveying parties was held up until the accuracy of their work was determined; this necessitated a full-time staff of investigators to examine and report on the surveys in the western offices and in the field. Even examiners were bribed to approve defective surveys and it might be years before the errors and fraud were brought to light. Contractors defaulted, bondsmen proved unreliable, judgments were filed against the parties responsible, and litigation between the government and these parties and between different owners over indeterminate boundaries was common. Furthermore, the surveyors general, acting with local politicians, continued to press for augmented funds each year, being interested only in contracts and the patronage they could dispense. As a result, numerous surveys had been made, as in the Mohave Desert, where dividing the land into quarter-sections was quite useless and a sheer waste of money.[61] Not all the fault in surveying resulted from the political character of the surveyors general and the staff they recruited; it was partly owing to the low price the government was willing to pay, especially in a rough and mountainous region like much of California. In such areas the $6 per mile was inadequate to tempt anyone to do an honest job, said a former United States surveyor. Williamson had the courage to recommend the abolition of the

[61] The Public Land Commission brought out much information in its interviews with registers and receivers of land offices, landlookers and agents, miners, lumbermen and others in 1880, concerning the inadequacies of the surveying system. "Report of the Land Commission, *H. Ex. Doc.*, 46th Cong., 2d sess., Vol. 22, No. 46 (Serial No. 1923), pp. 48, 65, 100–101, 162, 669–73; *GLO Report, 1880*, p. 31.

contract system and of the 16 surveyor general positions and the concentration of all responsibility for surveying in the hands of one official who would assign staff members to do the necessary work.[62]

Powell and the National Academy of Sciences went a step further, maintaining that the rectangular system of surveying and dividing lands into quarter-sections which had worked so well in the humid regions east of the 100th meridian was not suited to the semi-arid region where ownership of a waterhole or tract along a stream might control the grazing of thousands of acres in its rear, and where breaking up natural drainage areas did serious harm. Nor was it suited to the high mountain country where minerals were being mined.

The First Public Land Commission

Congress had gone on piling land law upon land law—altogether 3,500 of them—frequently without considering how later legislation might affect or be quite out of harmony with earlier laws which were not repealed. Laws intended for permanent application had been supplemented with "innumerable statutes, local in their application and temporary in their intended form." Rights had accrued under these local and temporary laws which were rarely repealed and "extended over the entire public domain." Furthermore, the looseness of most general laws had obliged the officials of the Land Office to draft elaborate specifications interpreting their meaning and explaining in detail how the registers and receivers were to carry them out. Conflicting interests rising from the ambiguities and incongruities of the statutes had long since begun to swamp officials at every level, from the register through the Commissioner, the Attorney General, the Secretary of the Interior, and even the President.[63] Overwhelmed with its burden and understaffed, the Land Office fell far behind in rendering its decisions, posting books, and completing and delivering patents.

In 1879 the movement for reform, strongly supported by members of the National Academy of Sciences, came to a head. One measure proposed to abolish the 16 surveyor general posts and to unite the responsibility for all surveying, except that of the Great Lakes, in the United States Geological Survey in the Department of the Interior. Another measure, introduced simultaneously, provided for the creation of a public land commission to codify existing land laws respecting survey and disposal, to recommend a system and standards for the classification of public lands as irrigable, arable, timber, pasturage, swamp, coal, mineral, and others as seemed proper, to draft a proposal for surveys adapted to the economic use of the various classes of

[62] The early reports of the Commissioner of the General Land Office and the correspondence of the Commissioner in the National Archives are replete with instances of defaults, fraudulent surveys, and the necessity of redoing them. For the situation in 1877 see *GLO Annual Report, 1877*, pp. 9–10; *Cong. Record*, 45th Cong., 3d sess. p. 1205; letter of John W. Powell, Nov. 1, 1878, in *H. Misc. Doc.*, 45th Cong., 3d sess., (Serial No. 1861), Vol. I, No. 5, pp. 16–18. Powell wrote: "Many millions of acres have thus been parcelled without the slightest necessity, the lands being worthless, and the landmarks have been allowed to perish, and all useful results have perished with them." Two years later Land Commissioner N. C. McFarland charged that "lands of no present practical value and on which there are no settlers have been largely surveyed; . . . applications for surveys are fraudulently prepared by or through the instigation and management of deputy surveyors. . . ." *Land Office Report, 1881*, p. 6.

[63] "Preliminary Report of the Public Land Commission," 1880, *H. Ex. Doc.*, 46th Cong., 2d sess., Vol. 22, No. 46 (Serial No. 1923), p. vi; Harold H. Dunham, *Government Handout. A Study in the Administration of the Public Lands, 1875–1891* (New York, 1941), *passim.*

For circulars of instructions to the registers and receivers, opinions and decisions of the Attorneys General and Commissioners of the General Land Office see Henry N. Copp, *Public Land Laws with the Important Decisions and Opinions*, and Thomas Donaldson, *The Public Domain.*

land, and to make recommendations concerning the best method of disposing of the public lands to actual settlers. Both Powell and Williamson's influence may be seen in these measures.[64]

The debate in the House on the proposals emanating from the National Academy of Sciences was sharp and reflected an easy tendency to condemn anything supported by scientists and opposed by politicians. The scoffing remarks about "visionary" scientists made by opponents of the measure to abolish the patronage in surveying might have attracted the attention of Richard Hofstadter for inclusion in his *Anti Intellectualism in American Life.* Only two, or at the most three House members from the 19 public land states were friendly to the dismissal of the surveyors general. One Representative from an older state who favored the dismissal admitted that if he were from a western state where the patronage was important he would oppose abolishing the positions. Classification of lands, modification of the surveying system, the removal of the surveyors' archives to Washington were all attacked and won little support. The upshot was that Congress provided for the union of all the geological surveys, except for those relating to the lakes, in the Geological Survey in the Department of the Interior. Powell had won his major objective. The other reforms related to surveying were dropped. When Milton Conover came to prepare his study of *The General Land Office, Its History, Activities and Organization,* in 1923, he found 13 surveyors general still possessed of considerable patronage.[65]

On March 3, 1879, a second land reform measure to which Powell had contributed was adopted. After years of touching appeals from the Commissioners of the General Land Office for more generous appropriations to enable them to maintain an adequate and sufficiently well paid staff and for reconsideration of the application of the settlement laws to various classes of land, Congress in 1879 provided for the first broad gauge investigation by a commission of experts to determine what was wrong with the land system and to make suggestions for corrections.[66] On this move there was practically no discussion in Congress. The measure provided for a commission of five consisting of the Commissioner of the General Land Office, then James A. Williamson whose support of reform has been mentioned; the head of the Geological Survey, then, Clarence King, a close associate of Powell; and three civilians to be appointed by the President. The commission was to report in a year on the codification of the land laws, a system of classifying the public lands, a substitute for the present surveying procedure in areas to which it was least adapted, and plans for future disposal of the public lands.

To serve with Williamson and King as members of the commission, President Hayes, possibly on the recommendation of Carl Schurz, appointed Alexander T. Brit-

[64] For the report of a committee of the National Academy of Sciences on different agencies doing surveying work for the Federal government and the desirability of unifying them in a new agency, the Geological Survey, see "Letter from the Acting President of the National Academy of Sciences, Transmitting a report on the surveys of the Territories," Nov. 26, 1878. *H. Misc. Doc.*, 45th Cong., 2d sess., Vol. I, No. 5 (Serial No. 1861), 27 pp. Also helpful are Wallace Stegner, *Beyond the Hundredth Meridian, John Wesley Powell and the Second Opening of the West* (Boston, 1954), and William C. Darrah, *Powell of the Colorado* (Princeton, 1951); Henry Nash Smith, "Clarence King, John Wesley Powell, and the Establishment of the United States Geological Survey," *Mississippi Valley Historical Review*, XXXIV (June 1947), 37–58; A. Hunter Dupree, *Science in the Federal Government. A History of Policies and Activities to 1940* (Cambridge, Mass., 1957), pp. 194 ff.

[65] Twelve of the 13 offices of the surveyors general had staffs of 7 to 12 in 1923; the Huron, S. Dak., office had only a surveyor general and a draftsman. Milton Conover, *The General Land Office. Its History, Activities and Organization* (Baltimore, 1923), p. 93.

[66] 20 Stat. 394.

ton, a former clerk in the Land Office, then of the firm of Britton and Gray, the most influential law firm then practicing before the Land Office, and in 1870 a substantial investor in public lands in Kansas; Thomas Donaldson, who was to be the workhorse of the commission; and John W. Powell.[67] Williamson was sufficiently optimistic to think that "radical" changes in public land disposal might come out of the report of such a commission and when its creation was authorized he urged (unsuccessfully) both the Senate and House Committees on Public Lands to appoint three members each to sit with and participate in the investigations of the commission.[68]

Powell's ideas and philosophy permeate every part of the commission's report and the nature of the questions submitted to witnesses. However, he did not have his way altogether and thought it necessary to submit a minority statement in which he disagreed with the other members on some issues. The members traveled for 3½ months by rail and stagecoach in the West where they discussed issues with land officers, miners, lumbermen, stock raisers, real estate dealers and, indeed, representatives of most elements interested in administering, buying, and selling, as well as exploiting the lands. Perhaps it is not surprising that in California where much of the best land was in a few hands the commission heard from representatives of the California Protective Union and the California Land Reformers' League who, influenced by Henry George, opposed public land sales and wanted titles to remain in the government. Instead of holding public hearings at which interested people would be invited to attend and give testimony, as congressional committees have long since learned to do to good effect, the commission drafted a detailed series of questions which they submitted to interviewees and thereby lost much of the value that comes from the give and take of oral examination after the submission of formal testimony.

The slant in the questionnaire assured that much attention would be given to mineral and timberland policy and the "pasturage lands" of the Interior Basin and California. Out of 673 pages of testimony, 251 pages plus nine maps are devoted to California, 76 are given to Colorado, 63 to Nevada, and 51 to Utah. Powell and Donaldson's intimate knowledge of the Interior Basin and the fact that none of the members of the commission were well acquainted with developments where homesteading was most active may account for the lesser attention devoted to that area. No one appeared before the commission from Kansas, the state where the largest number of homestead applications was filed in 1879—11,338—or from Minnesota, next with 5,699 applications. Testimony was taken from 34 people from Nebraska (4,905 applications) and Dakota Territory (5,688 applications) but California (1,887 applications) was represented by 84 speakers, Colorado (477 applications) by 43, Montana (140 applications) by 30, and Utah (548 applications) by 28. This concentration of the testimony and the efforts of the commission on what might more appropriately be called the Far West severely limited the significance of the recommendations and may help explain why they were so completely ignored by Congress which, at the time, was more aware of the need for reform in the administration of the

[67] Eight years later Britton could privately boast to Lucius Q. C. Lamar, Secretary of the Interior, before whose office much of his practice was conducted, that he had "a professional income exceeded by but few if any lawyers in the United States." Wirt Armistead Cate, *Lucius Q. C. Lamar, Secession and Reunion* (Chapel Hill, N.C., 1935), p. 476.

[68] *Cong. Record*, 46th Cong., 1st sess., June 30, 1879, p. 2488. Neither House acted upon his suggestion.

public lands immediately to the east and west of the 100th meridian.[69]

Nevertheless, the report contains a wealth of information and opinion given by people of substance in the Far West on problems of public land management. Much attention was devoted to the damage hydraulic mining in California was causing to the rich alluvial lands of the Sacramento and its tributaries. Some apologetic and defensive testimony was given to the effect that the resulting deposition enriched the land but the more convincing testimony related to the deplorable results being produced, for which there was no redress.[70] Williamson's concern about the scandalous management of surveying was thoroughly documented and little defense was offered for the influence of politics in the appointment of surveyors general and the award of contracts on a patronage basis to incompetent or unreliable persons.

Two topics that received considerable attention were of major importance to Kansas, Nebraska, and Dakota Territory. These were relinquishments and the extraordinary delay settlers endured in getting decisions on contested cases and cancelled entries through the bureaucratic red tape of Washington. The sale of relinquishments of preemption, homestead, and timber culture claims, to which the entryman might have devoted a good deal of labor and capital before he got title, had been banned by law. The purpose was to prevent dealers and landlookers from anticipating farm makers, but the prohibition had almost the opposite effect. Land agents early learned how to work through the red tape and bought and sold relinquishments as earlier settlers and dealers in Iowa had bought and sold squatters' claims on government land before it was surveyed. They made no effort to disguise their dealings, even advertising relinquishments for sale in the newspapers in land office towns. But if a settler tried to sell a relinquishment of a homestead directly to a landseeker he might run into difficulty. As the Denver register pointed out, the local officers had to report cancellations of claims to the Washington office, and until the General Land Office had noted the cancellation and authorized the local officers to mark the tract on their charts as restored to entry, no application for it could be accepted. Buyers of quitclaims to homesteads had no standing or right until they were notified that the tract was restored to entry. The applicants could file on the tract though the buyer of a relinquishment might be already on the land and making further improvements on it. Attorneys in Washington, the register said, learned of cancellations and restoration to entry before the local officers got the information; where there was a contest, or where the tract was in considerable demand, they could get their information to contestants or rival entrymen before the purchaser of the relinquishment was aware of the need to file his application quickly.[71]

One wonders what Alexander Britton may have thought of testimony coming before him concerning the ability of Washington attorneys to obtain information about cancellations and restorations to entry and to inform attorneys in the field by telegraph before the local land officers learned of it, thus permitting their clients to gain rights to which anterior settlers had better claims. Though the Washington attorneys were not accused of doing anything illegal by gaining this desired information through some friendly contact, they were able to deprive a more legitimate

[69] "Report of the Public Land Commission," *H. Ex. Doc.*, 46th Cong., 2d sess., Vol. 22, No. 46 (Serial No. 1923), *passim.*

[70] *Cf.* Robert L. Kelley, *Gold vs. Grain, The Hydraulic Mining Controversy in California's Sacramento Valley* (Glendale, Calif., 1959), *passim.*

[71] "Report of the Public Land Commission," pp. 83–84, 260–61, 324–25.

claimant of his right. More than one spokesman complained that Washington attorneys were able to gain preferment for cases, claimants they represented, patents they sought, and other actions that because of the increasing complexity of legislation and administrative decisions required the employment of attorneys. Other complaints related to the complex forms, the amount of supporting evidence necessary to prove up on preemptions and homesteads, affidavits, and the long journeys to the land office to complete the necessary forms. It was frequently said that when a claim was contested, the litigation and the tremendous amount of testimony one had to assemble were so time-consuming and expensive as to make it not worthwhile to press the fight. Yet many did, not being willing to be bested.[72]

One Federal office holder, John Wasson, surveyor general for Arizona, was unusually frank in answering the questions submitted to him by the commission. He advised that the Desert Land Act be repealed because of the ill success of settlers trying to gain ownership under it; consequently the act had brought the entire land system into contempt. Efforts of special agents appointed to detect depredations upon the public land ended too often in the agents extorting money from the guilty to the disgrace of the public service without providing effective protection or rightfully punishing trespassers. Wasson thought that homesteading on small tracts should be retained wherever there was land suitable for farming but on the mesa or tableland whole townships should be sold at a nominal price.[73]

The testimony of Vale P. Thielman, clerk of the District Court of Turner County in southeastern Dakota, is interesting both because of its detail and its view that the government was too generous with its land. In 1870 Thielman settled in Turner County where he filed on a quarter-section under the preemption law. He lived on the tract 6 months, built a house 10 by 12 feet for $75, had 5 acres broken at a cost of $25 and a well dug for $6. He set out 300 forest trees that cost him $5 and entered his tract with agricultural college scrip that cost $170. He does not mention land office fees. During the time he was on the land he says he earned his board and $87, which may have come partly from his agricultural operations and partly from helping others find suitable tracts on which to file. (In addition to his clerical duties he was a land dealer "and located settlers on public lands.") He was convinced that settlers could earn their living and gain title to their homesteads with prudent management and energy. Thielman thought the 480 acres persons could get through entries under the three settlement laws were too much for them to use effectively and he reported that a good deal of the land got into the hands of speculators. He was most familiar with southeastern Dakota but applied his remarks to all of the territory except the Badlands.

> I think if our laws were so made that any one person could only take 160 acres of a homestead and could only keep that by living on it and improving it, it would be more satisfactory. At present the settlements are so thin that people cannot have school and church privileges, and nearly every other quarter section is owned by some one that does not live on it and that holds it for a raise in land. One hundred and sixty acres of farming land is enough to support a good large family, and give a good support and have neighbors close together, and if parties taking homesteads were compelled to live on them, say, six or seven years or lose them, none but those who intended to take them and make a permanent home out of them would have anything to do with them, and such a law would hurt none that were honest in their intentions, but on the contrary

[72] *Ibid.*, pp. 83, 261, 324–25, 326–27.

[73] *Ibid.*, pp. 1–4; Thomas Glen Alexander, "The Federal Frontier: Interior Department Financial Policy in Idaho, Utah, and Arizona, 1863–1896" (Ph.D. dissertation, University of California, Berkeley, 1965), pp. 181–82.

would protect them and keep adjoining land out of speculators' hands.[74]

Had the commission given more time to taking testimony from people in the region where the bulk of homesteading was being made in 1879 its recommendations might have been considerably different and the report would have provided the historian with more insight into the way the homestead law was working.

In California, where Mexican land claims had given rise to long years of controversy over their validity, size, boundaries, and the taxes due on them, one finds more frankness in some of the comments concerning the owners of these claims than later historians have been inclined to show. The Los Angeles register, for example, maintained that the lands in the private claims should be segregated speedily in order to free public lands in their vicinity for entry and development. "It is always for the interests of the private claimants not to segregate, because they have the use of the public domain for stock purposes." Wasson stressed that the Spanish and Mexican grants "were conditional, and did not pass the absolute fee or title" which was dependent on continued occupation.[75]

The San Francisco receiver brought out that in California the preemption law was used to hold land for years, but without gaining title, to keep it from others. Sheepmen would file a preemption entry on a water hole and when the entry "ran out" without proving up another employee would file on the tract. He reported there were sections in southern California where as many as 15 different filings had been made. The only evidence of occupation was a shanty erected to conform to the requirements of the law. The cost of filing a preemption entry was only $3, whereas the cost of a homestead filing was $16.[76] Another California land officer declared that operators of lumber mills had used their employees to file declaratory statements for heavily timbered lands, had cut off the timber, and then abandoned the entries. He argued that only through sale could the government expect to receive any fair return from public lands.[77]

Galen Clark, who was appointed by the State of California to manage the Yosemite grant, expressed the view that the timberland up to elevations of 5,000 to 6,000 feet in the Sierra Nevada Mountains should be sold for not less than $2 an acre. All timber at higher elevations should never be sold but might be given to the State of California on express condition that it should be forever inalienable and that strict laws should be enacted for its protection. Without this protection the forests would doubtless be destroyed by cutting and fire and the resulting floods would render uninhabitable much of the valley land.[78]

A former register of the Humboldt, California, land office urged that no more scrip should be issued, for most previously issued "had been conceived in fraud, and located under the rules and regulations of the Land Department without authority of law." He and other witnesses alluded to the Soldier's Additional Homestead, the Valentine, and the Sioux Scrip which had been interpreted by the land officials as subject to use on any nonreserved, nonmineral land whether surveyed or not. It was these forms of scrip that brought high prices in comparison with the agricultural college scrip and the military bounty land warrants, which could only be used on surveyed land. A Nebraska respondent added that counterfeit scrip was in circulation; he cited the use of 200 counterfeit

[74] *Ibid.*, p. 325.
[75] *Ibid.*, p. 87.
[76] *Ibid.*, p. 38.
[77] *Ibid.*, p. 88.
[78] *Ibid.*, p. 43.

or forged pieces of scrip to enter land in Dakota Territory for which patents were issued only to be recalled when it was later discovered that all pieces were fraudulent. The loss fell on innocent purchasers.[79]

Light was thrown on the allotment of land in Utah before Federal land law was effectively extended to the territory. The interviewee was a Mormon who said that allotments of 10 and 20 acres were made only with the approval of the bishop. Favoritism was charged in making allotments. In anticipation of the introduction of American land law, churchmen made claims everywhere on likely land "to keep the Gentiles from taking part of the land." There was much confusion and litigation in reconciling the Mormon land tenure, with its small but intensively used allotments, and the Federal system of quarter-section homestead and preemption filings on land not being developed, numerous relinquishments, and subsequent delay in opening the forfeited or relinquished land to entry.[80] A commission to settle all the confusion and litigation carrying over from the period of church control of land was recommended.

Despite the inordinate allotment of space to testimony of people from California, Colorado, and Nevada (58 percent) and the relative neglect of the areas in which homesteading was most active, the commission brought together a mine of information, highly subjective though it may be, that gives an insight into the working of the land system at the turn of the period when the settlement laws were being abused increasingly by various interests to accumulate land.

The commission made more conservative recommendations than Powell's famous report and than Williamson in previous years. Its first recommendation, as was becoming good bureaucrats, was that the staff of the General Land Office should be increased by nine, that the Commissioner and the Assistant Commissioner should have their salaries increased by 50 percent, that some of the other members of the staff should have small increases, including laborers who might have their income augmented by 9 percent, or $1.20 a week. Here the commission was virtually taking over previous recommendations made by the Commissioner.

On surveying, to which much of the testimony of the interviewees was devoted, the commission recommended that surveying of swamp and grazing lands should be confined to township lines and that no further "land parceling" of such lands should be made, that "a proper system of monumentation" be established (although it did not indicate what would be proper), and that the contract system for surveying be ended and regular salaried deputies be substituted. It made no mention of the proposal to abolish the surveyor general positions which was too hot for it to handle, though it did suggest that they should have scientific and practical knowledge of surveying. But if it did not venture to deal effectively with the surveyors general the commission did propose to abolish the office of receiver, of which there were 94; this took some courage. Its argument was that the register and receiver duplicated each other's work and the General Land Office had sufficient supervisory authority to prevent any misuse of authority by the register without having a receiver to provide a check upon his every act.

The proposal to classify the lands, as recommended by Powell and by the commission, into arable, mineral, arid but irrigable, pasturage (for grazing), and timberland was not new but the report made little effort to establish criteria for classification or to determine how it was to be achieved. Like Williamson, the commission favored the repeal of the preemption laws. Al-

[79] *Ibid.*, pp. 56, 327.
[80] *Ibid.*, p. 492.

though repeal would have removed one of the procedures by which much land was being fraudulently acquired for nonagricultural purposes, it would also have taken some of the desired flexibility from the land system. To attract capital to irrigation, the commission recommended that irrigable land be sold in unlimited quantities, thus making it feasible for construction of large and costly dams and reservoirs that would irrigate many thousands of acres. It considered the possibility of the Federal government building such large structures that might cost a million dollars or more, but dropped the notion as "not in consonance with the traditions of the American people" —an interesting position in light of the fact that a generation later Congress was to veer sharply from these prevalent traditions in adopting the Newlands Reclamation Act of 1902. For the pasture or grazing lands, the location of which the commission did not make clear, homestead units of 2,560 acres were suggested, to be sold at graduated prices. With timberlands the commission had difficulty, but finally recommended the sale of stumpage on alternate sections, with the buyers required to preserve the younger trees.

Much testimony had been presented respecting the local regulations governing mineral lands, showing that they had worked badly and should be superseded by Federal laws. This was certain to raise the hackles of many but the reasons for the change seem to have been well presented. Debris deposited on farmland by hydraulic mining was sufficiently important to be the subject of investigation by a special commission appointed for that purpose.

A final recommendation of the commission that would have permitted the government and railroads to exchange land in order to consolidate ownership pointed the way for later exchanges that were to be among the most regrettable steps taken by Congress in land matters.[81]

Five volumes, essential for every historian of public land policies, were published for the Public Land Commission. The first contained what was called a "Preliminary Report" but was in fact the only statement of the commission's conclusions and recommendations. It ran to 47 pages and was signed by all five members of the commission, but Powell added to it a two-page qualifying statement in which he offered modifications in the recommendations concerning water and mineral rights. Accompanying the report were proposed statutes to carry into effect the recommendations. The proposed statutes were more concrete than the recommendations. A sore point with the Justice and Interior officials for years had been their inability to subpoena witnesses in trials of contested or questionable entries. This was to be taken care of by authorizing the registers to subpoena witnesses. Heavy penalties were to be assessed against registers who "knowingly and falsely" declared that tracts had already been entered when they had not, an evil against which there had been many complaints. Mineral lands and timberlands were to be excluded from the homestead privilege and were not to be sold. Instead, standing timber was to be sold after classification and grading into three groups according to quantity and quality. Pasturage lands were to be open to purchase in unlimited amounts at $1.25 an acre until 1886, when they were to be lowered in price to $1, in 1890 to 75 cents and thereafter were to be reduced 12½ cents an acre each 3 years until they reached the minimum of 12½ cents. Pasturage homesteads of 2,560 acres were to be available on sur-

[81] Taken seriatim from the "Preliminary Report of the Public Land Commission," and signed by all five members of the Commission, *ibid.*, pp. v–xlvii.

veyed and unsurveyed and unappropriated land.[82]

Most useful to historians is the 673 pages of testimony presented to the commission, notwithstanding the slighting of the areas where homesteading was being most actively conducted. There is much on mining, lumbering, farming, and ranching in the western states, in addition to land matters.

Codification of the land laws was assigned appropriately to Alexander Britton. Out of his work came three volumes, one of 210 pages devoted to "General and Permanent" statutes, and two volumes of 1,371 pages to statutes of a "local or temporary" character.[83]

The last volume "prepared and executed" by Thomas Donaldson has probably been used more than any other document relating to public lands (though when Congress was debating whether or not to have 8,500 additional copies printed, William S. Holman, who usually was quite knowing on land questions, said that it was "not a work of permanent interest suitable for libraries, but only of temporary interest").[84]

Donaldson was born in Columbus, Ohio, in 1843, graduated from Capital University of Columbus in 1862, served in the Union Army, studied law, was admitted to the bar in 1867 and in 1869 was appointed by President Grant register of the recently opened Boise, Idaho Territory, Land Office where he served 6 years. As was expected of registers and receivers, Donaldson continued active in politics with close association with Grant and Blaine men. In addition to his membership on the Public Land Commission he had official associations with the Smithsonian Institution and in 1890 was an expert special agent of the Census Bureau in charge of studies of Indian culture. He wrote a number of chapters on the Iroquois, the Eastern Cherokees, and the Pueblo Indians of the Southwest.

Donaldson's 6 years as register of the land office in Boise had given him a familiarity with the land legislation, the Commissioners' detailed instructions interpreting the laws, the pressure exerted on officers at every level by individuals seeking to gain their objectives, and the frequent interference by members of Congress in behalf of influential constituents. He held Williamson, his colleague on the commission and Commissioner of the General Land Office, in high esteem and cannot be counted among those who were very critical of the functioning of that office. He did criticize

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[82] "Report of the Public Lands Commission," *H. Ex. Doc.*, 46th Cong., 2d sess., Vol. 22, No. 46 (Serial No. 1923).

[83] *The Existing Laws of the United States of a General and Permanent Character and Relating to the Survey and Disposition of the Public Domain* (Washington, 1884). Bound with this is a *Digest of Late Decisions Relating to Questions Arising Under the Land Laws of the United States, 1884; Laws of the United States of a Local or Temporary Character and Exhibiting the Entire Legislation of Congress Upon which the Public Land Titles in Each State and Territory have Depended* (2 vol., Washington, 1884).

[84] *Cong. Record*, 47th Cong., 1st sess., Aug. 5, 1882, p. 6954.

Finding business dull and fees small at Boise, Donaldson asked for an additional patronage job as supervisor of the construction of the territorial penitentiary which paid him $1,500 in addition to the $500 he received as register. When the construction was completed, it is reported, so well liked were his services that the builders "presented him with a gold brick worth $500. . . ." He may have held other territorial offices before he left Idaho. Close friendship with Walt Whitman enabled Donaldson to write a book of reminiscences of the poet that is memorable. Donaldson's part in the recovery of the paintings and other collections of George Catlin and their transfer to the Smithsonian and his preparation of the "George Catlin Indian Gallery . . . with Memoir and Statistics," is another instance of his versatility and the breadth of his interests. Something of his Idaho career may be found in Thomas Glen Alexander, "The Federal Frontier: Interior Department Financial Policy in Idaho, Utah, and Arizona, 1863–1896" (Ph.D. dissertation, University of California, Berkeley, 1965), pp. 48, 51.

the failure of Williamson and his predecessors to touch upon sensitive questions and he was troubled by the ambiguities and incongruities of land legislation. The fact that before his appointment to the commission his work had made him familiar with land problems in the Interior Basin doubtless strengthened the commission's emphasis on the problems of the area west of the 104th meridian.

The contents of Donaldson's *The Public Domain* are well summed up in his subtitle, "Its History, with Statistics, with references to the National Domain, colonization, acquirement of territory, the survey, administration and several methods of sale and disposition of the Public Domain of the United States, with sketch of legislative history of the land states and territories, and references to the land system of the colonies, and also that of several foreign governments." In the usual bland fashion of government documents, the main portion raises no questions, answers few, and provides little or no information about the way the land system was actually functioning, save that statistics and documents are provided. Yet the detail has been and is today useful, for nowhere else in print can one find much of it. Donaldson was able to get the staff of the Land Office to compile data which had not been included in the annual reports though they too are literally crammed with information. An example is the table showing the annual number and acreage of all original applications for and final entries of homesteads. The reports had only provided the acreage of original entries, without the number of entries and without information about final entries.

Donaldson apparently intended *The Public Domain* to be a great compendium showing from what origins the public land system had evolved, with attention to the political considerations that had led to some of the important measures, such as the Homestead Act, and providing data concerning the acquisition, donation, grants, sales, and other routes to private and state ownership of land. Although it is not easy to reconcile some of his data with other data found in the annual reports of the Land Office, the discrepancies are not serious, and, the meticulousness with which part of the compilation was prepared makes the reader ready to conclude that where differences do exist, his data are the closest to being correct.

On occasion Donaldson erred seriously. It is not correct to assume that Congress abandoned sales for revenue as it moved toward a general preemption law (p. 215). Not even with the adoption of a free land grant to homesteaders in 1862 was revenue abandoned, nor has it been abandoned today. The long extract purporting to be Stephen A. Douglas' account of how the first railroad land grant was enacted is far from the truth as even a brief study of the *Congressional Globe* would have made clear. One writer has shown that Donaldson committed six important errors in one sentence concerning the grants of the saline lands to the states when they were admitted.[85] Another writer who had occasion to rely heavily on *The Public Domain* called it "a scrapbook of land legislation intermingled with some original thought and many inaccuracies" but he conceded that it had filled "a vital need. . . ."[86] E. Louise Peffer warned that Donaldson had "to be used with caution; it contains many inaccuracies."

Donaldson's first edition, completed in 1880 and published that year, was revised

[85] M. N. Orfield, *Federal Land Grants to the States with Special Reference to Minnesota* ("University of Minnesota Studies in the Social Sciences," No. 2), p. 90.

[86] Robbins, *Our Landed Heritage. The Public Domain, 1776–1936*, 291n. Robbins reproduced Donaldson's error concerning the abandonment of the revenue feature; E. Louise Peffer, *The Closing of the Public Domain. Disposal and Reservation Policies, 1900–1950* (Stanford, Calif., 1951), 12n.

and printed in a second edition in the serial documents in 1881.[87] The following year Congress authorized the printing of 8,500 additional copies of *The Public Domain* with a supplement to include all laws passed prior to the adjournment of the session of 1882-83. This was interpreted by Donaldson to authorize him to add a vast body of regulations, instructions, forms and blanks, and excerpts from the reports of the Commissioner of the Land Office, to bring his statistics up to 1883 and to include some data quite irrelevant to the general subject in a third edition. Not only were all officers, timber agents, clerks, messengers, and laborers given space with their salaries, but all Indian reservations, their acreage and the denomination of missions located on them, the number of each tribe, the names of the agents and both their mail and telegraphic address and 50 pages of specimen field notes of surveys were also included. One may well wonder what Holman thought of this portion of the completed *Public Domain,* in view of his judgment of the first part.[88]

The longer supplementary part of the revised edition of *The Public Domain* is in numerous places very different from the bland analysis one finds in the first part. Donaldson here discarded all caution that bureaucratic rules of language dictated and adopted an extremely polemical tone, arguing, condemning, cajoling, exaggerating, and even resorting to questionable language in denouncing acts of Congress. He may have been battling in a good cause, which was the reform of the land system to safeguard the remaining public lands for actual settlers, cattlemen, lumbermen, miners, and mining companies from pernicious speculators, but the extreme way in which he expressed his views did little to soothe the feelings of those eager to profit from the existing system. For example, the Act of June 22, 1876, reopening southern public lands to cash sale after a public offering was called "a mere subterfuge," a cunning device to pass a cash or private sale law, a "farce" (p. 545). The repeal Act of 1876 and another measure allowing the purchase of mineral land in the South "do violence to the views of the majority of the people, are for the use and benefit of capitalists and speculators, and are against sound public policy" and should be repealed (546). He spoke of the "present useless and vicious disposition and cash sale laws" which undoubtedly were working badly but sales under them, if we exclude the preemption law, were at least above board and not marred by fraud, as was use of the Preemption Act. He declared that "1,120 acres to a person under the several laws is now the rule," for which he had no evidence other than a few scattered entries (533). Twice he indicated there were only 5 million acres of "purely agricultural lands" remaining in the West

[87] *H. Ex. Doc.*, 46th Cong., 3d sess., No. 47, Part 4 (Serial No. 1975), 544 pp. including index.

[88] Donaldson's expanded third edition appeared, as in 1881, with the same title, *The Public Domain. Its History with Statistics* (Washington, 1884), *H. Ex. Doc.*, 47th Cong., 2d sess., Vol. 19, No. 45, Part 4, "with addenda to June 30 and December 1, 1883." It is this expanded edition with a much larger printing that is usually cited. The first 516 pages are identical with the 1881 edition save for the numerous insertions after chapter headings instructing the reader to see pages in the addenda which bring the data up to June 30, 1882 and 1883. It also contains a map of Indian Territory that was not included in the 1881 edition. Found here is the famous map showing the primary area of the railroad land grants in which the railroads were to have alternate sections, and the indemnity area where they could make selections for land they lost in the primary area. In its original form as published in Donaldson, the 14″ by 28″ map makes sense but when compressed to 3″ by 5″ and the distinction between primary and secondary or indemnity areas obliterated, it is deceptive. For Robert S. Henry's attack upon the compressed map and historians who had made use of it without giving a clear explanation of it see his "The Railroad Land Grant Legend in American History," *Mississippi Valley Historical Review*, XXXII (September 1945), 171–94.

in public ownership (531). This was in line with Major Powell's views but even in 1883 was wrong. The height of homesteading was still to be reached in Kansas, Nebraska, and Dakota Territory and though the rate of failure was to be higher and the average size of farms increasingly large (well beyond the 160-acre unit), the Homestead Act was still to be important in enabling men of limited resources to establish farms in the region beyond the 100th meridian.[89]

Donaldson summarized all the charges brought by Williamson and his successor in the Land Office about fraudulent practices under the Preemption, Timber Culture, Desert Land, and Timber and Stone Acts and demanded their repeal, along with the cash sales laws, and the Swamp Land Indemnity Act. He favored redemption of scrip and warrants, swift completion of the surveys and patenting of the private land claims that had been hanging on now in some instances for a hundred years, and ending the system of contract surveying. Lapsed, unused, and unearned railroad land grants and their exemption from taxes until the railroad companies paid the cost of surveying them were the subject of excited agrarian demands but Donaldson was unmoved by their appeals. He was vague in his recommendations for the classification of the lands, amendments to the homestead law to assure that lands would only go to farmers and ranchers, and proposals for the consolidation of the mineral land laws.

There was reason and justice in most of the recommendations Donaldson made, though he had not sufficiently considered substitutes for the laws he thought ought to be repealed and his rough and at times inaccurate arguments for change earned little support. His hostility to the new immigrants coming to the United States from southern Europe led him to write under the heading "The Public Lands Virtually Reserved for Foreigners" that preferential rights had been given to people of alien birth in the selection of public land since the adoption of the Preemption Act of 1841, that more than one-third of all foreigners coming to America took up public land, and that many could sign the entry papers only with an X. The "appalling length and queerness of almost unpronounceable names" distressed him. He argued that the lands should be reserved for citizens, and citizens of Nordic background at that. He demanded to know why we should give a land bounty to the Italians who were coming in such large numbers, 80,000 in 1882, 90,000 in 1883.[90] Donaldson's xenophobia was shared by many people at the time but that he distorted the facts on this subject raises doubts about his accuracy on other questions where his prejudices were involved.

Powell, Williamson, and Donaldson each made the error of declaring that to all intents and purposes the arable lands were gone and of advocating that other procedures than the 160-acre Homestead and Preemption Acts should be devised to divide up the "pasturage" lands among people who would best utilize them. The West could not concede that the arable lands were exhausted and the success of 200,000 homesteaders in carrying their claims to title in the 1880's supports this position.

[89] Lee, "Kansas and the Homestead Act, 1862–1905," Chap. x, xl, xii, and xiii are particularly useful.

[90] Donaldson, pp. 535–36. *Historical Statistics*, p. 57, shows 32,159 Italians entering in 1882 and 31,792 in 1883. It would be interesting to know if a baker's dozen of newly arrived Italian immigrants managed to file on public lands. Almost simultaneously with Donaldson's outburst against Italian immigrants and their right to acquire public lands the *Nation* said, "There are probably not ten persons in the United States who would think of putting any restriction upon the settlement of our unoccupied lands by foreigners, always excepting the Chinese." Vol. 37 (Oct. 11, 1883), 306.

All three men had presented adequate evidence of the fraudulent character of contract surveying and of extensive misuse of the Preemption, Timber Culture, and Desert Land Acts; in calling for their repeal, they had avoided the major question of how to make these laws work properly through efficient administration. It was unfortunate that the report of the commission, the more restrained section of *The Public Domain,* and Commissioner Williamson's recommendations concerning the need for a reconsideration of the major land laws were so completely disregarded.[91]

It goes without question that Powell's report on the arid lands and the report of the Public Land Commission, with their obviously misleading accounts of the region both east and immediately west of the 100th meridian, would not be favorably received in North and South Dakota, Nebraska, and Kansas. The Nebraska State Agricultural Society and the Nebraska State Horticultural Society asked Professors Sammuel Aughey and C. D. Wilber of the College of Agriculture to comment on the tenor of the reports to " 'condemn as agricultural,' and 'dominate, *for all time to come,* only as pasturage lands,' that portion of the state situate west of the one hundredth meridian." The professors scoffed at the commission which contained no one familiar with soil science, denied that the rainfall beyond the 100th meridian was insufficient to produce cereal grains, directed attention to the cycles of rainfall in which a number of abnormally dry years had been followed by unusually wet years, and argued that "climates in the west are becoming moister; that rainfall is increasing steadily." This increased rainfall which was attributed to farm development was sufficient, they maintained, to produce crops without irrigation in the plains east of Denver and Laramie. To close the area west of the 100th meridian to homesteading would be "in the interest of capital against the toiling millions. The success of this project would be a crime against society and calamitous to us as a state."[92]

[91] Search in the *New York Times* index and the periodical literature reveals little attention was paid to the report or to Donaldson's *The Public Domain.*

[92] Samuel Aughey and C. D. Wilber, "Agriculture Beyond the 100th Meridian or a Review of the U.S. Public Land Commission" (Lincoln, Nebr., 1880), 7 pp.

CHAPTER XVI

An Incongruous Land System

Congress became increasingly generous in its land grants to the states for schools, universities, capital buildings, canals, and railroads, but there is no indication in all the discussion of these measures, or even of free homesteads, that it was abandoning revenue as a basic feature of American land policy. In fact, all such grants were made to provide either endowment or revenue to the states and railroads; Congress was merely sharing its bounty with them expecting, and in some legislation requiring, them not to sell the lands at less than the minimum price of Federal land. Railroads were not to sell their grants for less than $2.50 an acre; Colorado was not to sell its school lands for less than $2.50 an acre; and the Omnibus States of Washington, Montana, North and South Dakota were required not to sell their school land at less than $10 an acre.[1] It was the establishment of such high minimum prices that prevented the sale of lands in such states as Idaho, Montana, Wyoming, and Washington in the early period of the states' history and compelled them to develop plans for leasing, which at a later period made them important land administering agencies.

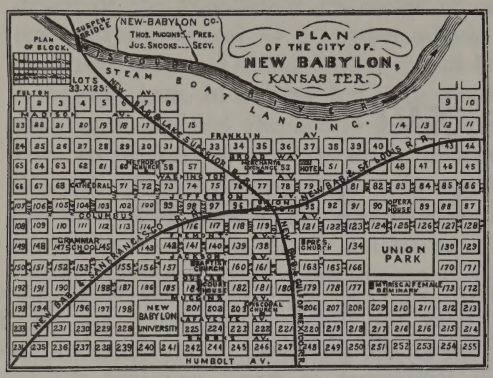
Federal law required that all public lands, when first opened to public sale, be offered at $1.25 an acre. The double-minimum price for land within railroad grants was retained until 1879 and 1880; preemption entries still called for the payment of $1.25 an acre as did desert land entries; the Timber and Stone Act, which allowed the purchase of 160 acres of land for its timber or stone, required the payment of $2.50 an acre; and homesteaders wishing to commute their entries in order to borrow on the land were obliged to pay $1.25 an acre for it. All this suggests that notwithstanding the adoption of the principle of free lands to settlers in the Homestead Act of 1862 Congress had not changed its basic position that public lands should produce revenue.

Although the Homestead Act included no provision closing out unlimited sales of offered land, there was a strong feeling in the West against further offering of land at public sale. Memorials and petitions from most of the new states took this position, but Congress was not prepared to halt further offerings of land or to end cash sales. The attitude of the officials in Interior was not altogether consistent, though some of them favored permitting unlimited sales.

Sales Continue After Homestead

When the Homestead Act was adopted there were 83,919,649 acres of offered land open to unlimited purchase, every part of which would remain in that category until it was withdrawn for a railroad grant, or temporarily withdrawn under the Southern Homestead Act of 1866, or selected by a state as part of its internal improvement or agricultural college grant, or entered by a

[1] Acts of March 3, 1875, 18 Stat. 476; and Feb. 22, 1889, 25 Stat. 677.



THE CITY OF NEW BABYLON ON PAPER.

private purchaser with cash, scrip or warrants, or by a homesteader. This was more than half the entire acreage sold since 1789. Included were 3,600,000 acres in the Central Valley of California, 6,582,000 acres in Michigan, 3,600,000 acres in Wisconsin, 3,113,000 acres in northwestern Iowa, 1,835,000 acres in Missouri, some 10 million acres in the eastern parts of Kansas and Nebraska, and 47,726,851 acres in the five public land states then in the Confederacy. Some of these lands were to be selected for public purposes or by railroads and thus the amount open to unrestricted purchase was reduced.

In view of the great outcry against the offering of public land during the Buchanan administration, it is surprising to note that within 10 days after President Lincoln signed the Homestead Act he ordered into market 4,422,700 acres in the Willamette Valley of Oregon and 834,263 acres in Wisconsin. In 1863, 3,004,000 acres in the Territory of Washington, 39,039 acres in Michigan, and 145,000 acres in Kansas were ordered to public sale and in 1864, 3,696,000 acres in Minnesota were proclaimed for sale. The failure of Congress to include in the homestead law a provision that would reserve the remaining public lands for actual settlers in small tracts and Lincoln's orders proclaiming 11,930,000 acres open to unrestricted purchase are fair evidence that the new administration had no intention of withholding land from investment and speculative purchasing and seemingly had no thought that the public lands were not to be a source of revenue in the future.[2]

Further large sales were ordered by Lincoln's successors. In 1866, 6,423,984 acres "principally pine lands" in northern Wisconsin were proclaimed for sale. This brought all the remaining unappropriated public land in Wisconsin into market, subject to unlimited purchase.[3] Land was first offered at public auction in New Mexico and Colorado in 1870 when 1,644,388 acres in New Mexico and 143,000 in Colorado were opened to purchase. At the same time 861,000 acres that had been withdrawn from sale in Kansas to allow railroads to make their selections were restored to unlimited purchase.[4] In 1872 "valuable timber lands" in Minnesota comprising 277 townships or something over 6 million acres were ordered to sale at the Duluth, St. Cloud, and Taylor's Falls offices.[5] In summary, we may say that an area the size of Ohio was added to the land open to unrestricted entry after 1862.

One of the first new areas to attract the attention of speculators and capitalists, who demanded that it be opened to unlimited entry, was the Sioux Reserve west of St. Paul in Minnesota. After the crushing of the Sioux uprising of 1862, the Indians were removed from the reserve and Congress rushed through a measure to provide for the disposal of the lands at their

[2] The acreage of offered land is given in the *Annual Report of the Secretary of the Interior, 1862* (p. 30), *1863* (p. 11), and *1864* (p. 30); the remaining unsold land of the various states is given in the *GLO Annual Report, 1867,* p. 367. For our purposes, these figures are only useful for those states in which the surveys had been completed or were approaching completion. (See App. B).

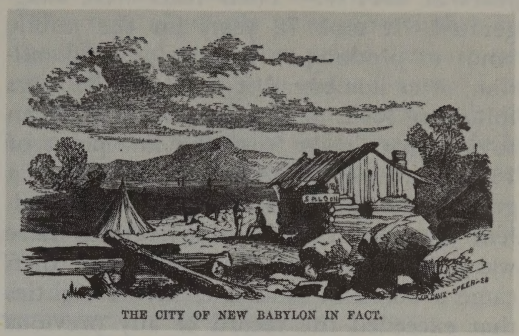
[3] *GLO Annual Report, 1866,* pp. 26–27.

[4] *GLO Annual Report, 1870,* p. 176.

[5] *GLO Annual Report, 1872,* p. 26.

appraised value, presumably to actual settlers. Since the appraised price for the more attractive land was well above the government minimum there were few sales, to the distress of the local land officers, whose fees were slight. Also, it appears, the register and receiver wanted to acquire select lands in the tract. They urged Joseph S. Wilson, Commissioner of the General Land Office, to declare the Sioux lands open to unrestricted entry and they secured the support of the two Minnesota Senators. Wilson was agreeable and 310,000 acres were opened to entry in 1867 in large or small tracts, in apparent violation of the spirit of the Act of March 3, 1863, which provided that the right to buy the land should be limited to "actual bona fide settlers."[6] The lands, called by a recent writer a "speculator's paradise," were well located on or close to the Minnesota River and offered good opportunities for farming. Ignatius Donnelly, then a Minnesota Representative and later to be a Populist leader, did his best to have the order revoked and was successful in having lands on which there were settlers who could not pay up withdrawn from sale. Fifty men of capital, both absentees and residents of Minnesota, each bought from 750 to 16,917 acres for a total of 159,202 acres. Among these large purchasers were the register and receiver who, guided by the field notes and plats of the surveyors to which they had access, scattered their 3,500-acre purchases in small select tracts.[7]

An argument frequently offered in opposition to the homestead bill was that its enactment would seriously hurt land values in the older states by drawing people to the West, would reduce the value of the many military bounty and land warrants still outstanding, and would be grossly unfair to those who had in the past bought lands in the West. President Buchanan had dredged up these arguments in his veto message, borrowing them from speculators, land and warrant dealers, and conservatives who feared any change. That similar arguments had been used against reduction in the price of land, preemption, and graduation, and had always been proved wrong may not have occurred to him or to his advisers. Suffice it to say here that there was no appreciable reduction in land values in the older states that can be attributed to the homestead law. The value of the land warrants was already down well before free homesteads were enacted, and land values in the West seem not to have been affected.[8]


THE CITY OF NEW BABYLON IN FACT.

From A. D. Richardson,
Belond the Mississippi, *1867*

Those people who still clung to the notion that the public lands should be a source of revenue to the government feared that free homesteads would reduce the government's land revenue which, next to customs, had been the most important source of revenue except for the Federalist and early Republican years, and the war

[6] *GLO Annual Report, 1867,* p. 94.

[7] William J. Stewart, "Settler, Politician, and Speculator in the sale of the Sioux Reserve," *Minnesota History,* XXXIX (Fall 1964), 85–92.

[8] One hundred and sixty-acre land warrants were quoted on March 9, 1860, at 75 cents an acre; on Nov. 5 at 88 cents; on Jan. 14, 1861, at 70 to 75 cents; on May 23, 1861, at 65 cents; on Feb. 27, 1862, at 61 cents; and on July 31, 1868, at $1.12. Quotations are from the *New York Tribune* and business correspondence too numerous to cite.

years of 1814-17.[9] Their fears were exaggerated. It took 72 years for the public lands to produce an income of $170 million; after homestead it took only 48 years following 1862. Sales of public lands began to pick up slowly from the low point of 1862, reaching $4,020,000 in 1869, or a greater sum than was received in the excellent year 1857. During the seventies there was a decline in land revenues, and then came a boom in land sales in the eighties that exceeded the record of any previous period save that of the thirties. Actually the big increase in income from public lands has come in the 20th century when land sales, stumpage sales, and mineral leases have produced a gross income that has exceeded by 12 times the total income of all sales to 1862.[10]

After every period of expansion and speculative purchasing there were many million acres of land in unsteady hands insufficiently provided with funds to carry them over long periods of time. Consequently, such owners were forced to liquidate their holdings, not infrequently in poor years when prices were low. This fact has led some writers to maintain that investors could make more profit in other forms of investment than in lands. Their evidence, however, is based on records of those individuals and groups which were forced to liquidate their investments at the wrong time.[11]

Speculative purchasing of land revived before the Civil War was over, reached a high point in 1870-72, and then declinced during the long depression which set in after the Panic of 1873. Contributing to this upward movement of speculation between 1864 and 1872 was the Agricultural College or Morrill Act of 1862. By this act non-public-land states became entitled to receive scrip in lieu of the land that was given to the public land states to aid in the establishment of colleges at which agricultural sciences and mechanical arts would be taught. States were to receive 30,000 acres of land, or its equivalent in scrip exchangeable for land, for each Representative and Senator they had in Congress. Thus New York received 990,000 acres in scrip, Pennsylvania 780,000, and so on down to Delaware, Kansas, and Oregon which only received 90,000 acres. A total of 7,830,000 acres in scrip was thus distributed to the states, though the southern states were not to receive their share until some time after the war. This scrip was subject to more restrictions than military warrants. It could not be used by settlers to preempt their claims, after July 27, 1868, only three sections in a township could be entered with it, and no more than a million acres could be entered in any one state. In consequence its market price was below that of the warrants. The lowest price for which states sold their scrip was 42 cents, 50 to 60 cents being the more common price, and after 1870 when demand for land was large, the price rose to a dollar or more an acre. With such prices prevailing, it is understandable why speculators and lumbermen rushed to purchase the scrip and to enter huge tracts of land with it. The 10 largest entries with the

[9] *Historical Statistics of the United States* (Washington, 1960), p. 712.

[10] *Ibid.*

[11] A study of the John Grigg estate of 124,000 acres in Illinois, the Miles and Elias White entries of 165,000 acres, and the Easley & Willingham entries of 300,000 acres in several states of the Upper Mississippi, all of which were intended as credit transactions for settlers or for early resale to farm makers, and the 500,000 acres that Cornell University came to own, mostly in the pineries of Wisconsin, shows that it took close to a generation to dispose of lands entered at the height of a period of great speculation and to come out well. The difference between these and many other cases and those Swierenga has examined in Iowa is that the latter were all to turn over their investment at a good return in 2 to 3 years. Robert L. Swierenga, "Pioneers and Profits. Land Speculation in the Iowa Frontier" (Ph.D. dissertation, University of Iowa, 1965), pp. 291 ff.

agricultural college scrip included pine lands in Michigan, Wisconsin, and Minnesota, good agricultural land east of the 98th meridan in Kansas, and San Joaquin Valley land in California.

Dozens of others, speculators, ranchers, and lumbermen acquired from a few thousand acres to 40,000 acres with the scrip. The rush of people to acquire timber and prairie land at the low prices the scrip permitted and the failure of the General Land Office to keep closely in touch with the local offices as entries were being made led to the million-acre limitation being exceeded in Michigan, Wisconsin, Minnesota, Nebraska, and California, which Congress later sanctioned.[12]

THE 10 LARGEST HOLDINGS OF LAND ACQUIRED WITH AGRICULTURAL COLLEGE SCRIP

Name	Location	Acreage
Chapman, William S.	California	210,000
Cornell, Ezra	Wisconsin	499,000
Dodge, Satterlee & Mason	Michigan	85,000
Friedlander, Isaac	California	192,000
Hansell, B., Trustee	Michigan	65,000
Harper, Rice, (Jay Cooke et al)	Minnesota	45,000
Howe, Calvin	Minnesota	89,000
Lawrence, Amos A.	Kansas	62,000
Miller & Lux	California	79,000
Palms & Driggs	Michigan	103,000

Compiled from records in the National Archives.

Estate builders, ranchers, lumbermen and dealers in timberlands, and speculators who entered great areas with the agricultural college scrip also used land warrants, of which there were still many outstanding, and other forms of scrip and cash to increase their holdings.[13] Some forms of scrip like the Valentine, Sioux, and Porterfield were especially valuable, for they could be used to enter land that was not subject to cash entry and the Valentine Scrip could be used to enter choice land that it was almost impossible to acquire in any other way.

Another post-Civil War innovation that, like the Valentine Scrip, made possible substantial entries of especially desirable unoffered land controlling access to water or having a heavy stand of timber, was the use of certificates of deposit. Legislation of 1862 had permitted surveys to be made at the request of settlers and at their expense. After 1871 the amount they deposited in advance for the survey became acceptable in partial payment for a preemption entry. An Act of March 3, 1879, made these certificates of deposit negotiable and acceptable in payment for any land that was subject to entry under the homestead and preemption laws. Over the course of the 17 years from 1861 to 1879 a total of $368,625 had been paid in for surveys which the government might not have made for years to come. Many of the surveys thus requested were in hilly or partly mountainous coun-

[12] I have treated the management of the scrip by various states and land entries made with it in my *Wisconsin Pine Lands of Cornell University* (Ithaca, 1943). See also Thomas Le Duc, "State Disposal of the Agricultural College Land Scrip," *Agricultural History,* XXVIII (1954), 99 ff.

[13] The use of soldier's additional homestead scrip became another favorite method used by dealers in timberlands to gain ownership of choice public lands not open to unrestricted entry. Attention is given to this form of scrip in Chapter XV on homesteading.

try in California where there might be small meadows useful for a grazing homestead or even, if there were water, for one or more small farms. After 1879 when the deposits became both assignable and available as advance payments on land that otherwise could be entered only under the settlement laws, the certificates took on value well in excess of the $1.25 an acre. Immediately, the requests for surveying increased and the accompanying amount of deposits mounted, reaching $941,741 in 1880; $1,749,547 in 1881; $2,134,175 in 1882; $437,949 in 1883; and $549,854 in 1884—a total of $5,813,368.

Large Holdings

Through its interpretation of the three acts the Land Office broadened the area in which the surveys could be ordered and permitted the assignment of certificates issued before the Act of 1879, a privilege it had not specifically sanctioned. Commissioner Sparks characterized the Act of 1879 as having been in no way "advantageous to the public service. On the contrary, it has been an unmixed evil. It has promoted unnecessary and improvident expenditures, premature and worthless surveys, the corruption of public officers, and the unlawful appropriation of vast bodies of the most valuable unsettled public lands." The surveys were extended into areas where settlement would not normally have gone, notably into valuable timberlands such as the redwood lands of Humboldt County, California, and once they had been surveyed they were subject to entry under the Homestead and Timber and Stone Acts.[14]

The huge size of larger holdings acquired after the Homestead Act was adopted is almost breathtaking. William S. Chapman entered a total of 631,000 acres in California in addition to large areas of swamp and school lands obtained from the state. Francis Palms, the millionaire Detroit lumberman and dealer in pine lands, entered with Frederick Driggs 412,260 acres in Michigan and Wisconsin. William E. Dodge, manufacturer, mining magnate and lumberman and a prominent philanthropist in his later years, joined with George B. Satterlee and Thomas F. Mason to enter 254,000 acres in Michigan and Wisconsin. Isaac Friedlander, a partner in numerous transactions with William S. Chapman, entered 214,000 acres. Miller and Lux, the West Coast's leading livestock firm, took over much of the Chapman lands, entered an additional 181,000 acres of Federal lands and built up their holdings to more than a million acres in California, Oregon, and Nevada. In Michigan, Wisconsin, and Minnesota lumbermen and timber and mineral land speculators bought up the last remaining stands of timber on public lands. In Minnesota Thomas B. Walker built up his great empire of timberland, having entered 166,000 acres in that state. Ultimately he was to own 700,000 acres in a number of states. Other large purchases in Minnesota were made by Calvin Howe, 105,000 acres; John

[14] *Land Office Report, 1885,* pp. 13–15, 161–71. A later Commissioner was convinced that in heavily timbered sections of Washington some settlers could find land suitable for farming and relaxed the rigid position of the Land Office. *Land Office Report, 1889,* p. 45.

S. Pillsbury, 75,000 acres; and William C. Yawkee, 67,000 acres. In the last two decades of the 19th century shrewd capitalists like Charlemagne Tower grabbed up choice iron ore land in the Mesabi Range of Minnesota, partly by cash, scrip, and warrant entries and partly by the use of dummies entering homestead and preemption claims.[15] The statistics of entries with warrants, scrip, and cash, as compared with entries under the homestead law show that those who feared the adoption of a free land policy would bring about a rapid decline in income from land sales and a sharp reduction in the value of the military warrants were poor prophets. California, where the first offerings of public land were made in 1858 and 1861, provides an interesting illustration of the fact that public land was acquired through cash purchase and warrant and scrip entries even though free land for homesteaders was available. Not until 1876 did original homestead entries exceed entries with cash, scrip, and warrants.

[15] Fremont P. Wirth, *The Discovery and Exploitation of the Minnesota Iron Lands* (Cedar Rapids, Iowa, 1937), *passim.*

ENTRIES OF LAND IN CALIFORNIA IN ACRES

Year	Cash	Military Warrants	Agricultural College Scrip	Homestead (Original Entries)
1866	82,388	n.a.[a]	----------	65,231
1867	258,569	n.a.	----------	44,261
1868	464,405	14,960	580,572	88,798
1869	1,726,794	9,160	158,208	59,666
1870	445,962	14,040	36,657	67,634
1871	221,186	17,400	158,898	213,704
1872	255,060	n.a.	248,578	209,790
1873	202,061	n.a.	286,528	169,819
1874	266,128	n.a.	51,296	180,947
1875	358,299	26,960	4,158	295,915
1876	306,487	n.a.	1,520	403,008
1877	401,022	79,040	640	200,374
1878	277,938	69,860	----------	249,667

[a] Not available.
From GLO *Reports.*

We also have a table for Kansas showing the cash, warrant, and scrip entries, Indian land sales, State of Kansas land sales, railroad land sales, and the original homestead entries for 1863 to 1873. Only in 1863, 1864, and 1872 did homestead entries exceed the acreage acquired by these other methods.

COMPARISON OF LAND SALES, INCLUDING WARRANT AND SCRIP ENTRIES BY UNITED STATES, STATE OF KANSAS, AND KANSAS RAILROADS WITH NUMBER OF ORIGINAL HOMESTEADS (IN ACRES)[a]

Year	United States Cash, Warrant & Scrip	Indian Lands	State of Kansas	Railroads	All Sales	Original Homesteads
1863	1,367				1,367	169,221
1864	2,670	18,468			21,138	98,619
1865	69,535	296,836			366,371	52,972
1866	146,208	12,503			158,711	146,989
1867	281,590		1,920		283,510	154,675
1868	187,151	50,788	5,279	111,271	354,489	165,976
1869	85,180	26,044	76,187	473,262	660,673	228,137
1870	336,005	93,625	62,372	318,193	810,195	647,186
1871	265,232	744,735	74,086	265,642	1,349,695	1,191,622
1872	133,113	768,870	50,663	195,861	1,148,507	1,227,376
1873	123,146	563,911	34,300	245,995	967,352	817,124
Total	1,631,197	2,575,780	304,807	1,610,224	6,122,088	4,899,897

[a] Statistics of warrant entries and of sales by the State of Kansas for certain years are unavailable. Neutral Tract lands of 27,741 acres and 89,690 acres of "free" or state lands given to the Missouri River, Fort Scott, and Gulf Railroad and sold in 1871, 1872 and 1873 have been equally divided between the 3 years because the annual sales were not available. The table does not include all the state sales, nor the land sales of a number of the railroads holding smaller grants and Indian reserves. The sales of Indian land to railroads have not been included.

Compiled from GLO *Reports*, annual reports of the Kansas railroads, Kansas State documents, and Gates, *Fifty Million Acres*.

For the entire public land states, with some figures for land warrant entries missing, we have the following table:

SALES AND ENTRIES, 1863–1870

Year	Cash Sales, Military Warrant, and Scrip Entries	Original Homestead Entries
	Acres	
1863	556,036	1,040,989
1864	1,163,092	1,261,593
1865	1,366,003	1,160,533
1866	1,442,540	1,892,517
1867	3,363,873	1,788,043
1868	3,080,783	2,328,923
1869	3,726,248	2,737,365
1870	2,881,551	3,698,910

From GLO *Reports*.

After 1871 the original homestead entries always exceeded those with cash, scrip, and warrants, but the latter remained substantial until 1891.

Benjamin Hibbard is responsible for the view, long widely accepted, that land sales after 1862 were not only small but were mostly associated with preemption and that after 1868 the sale of agricultural land virtually halted.[16] This is not correct. Numerous large entries were being made in Nebraska and Kansas on lands well east of the 99th meridian. For example, William Scully, an Irish landlord disillusioned with the returns from land in his own country, first came to America in 1850 and entered 38,000 acres of fertile prairie land which soon yielded him sufficient income in rents which, together with the funds derived from liquidation of his Irish estates, enabled him to expand his purchases greatly. In 1870 he bought 41,420 acres in Nuckolls County, Nebraska, and 15,220 in Dickinson and Marion Counties, Kansas. Thereafter

[16] Hibbard, *History of the Public Land Policies*, pp. 110–13.

his holdings were further increased by purchases from private individuals until they totaled 134,234 acres in Kansas and Nebraska, 42,000 in Missouri, and 44,000 acres in Illinois. Other large buyers of land in Nebraska in 1870 were William McGalliard, a farm manager of Scully, 7,607 acres; David Rankin, owner also of large holdings in Illinois and Missouri, 3,796 acres; Charlotte R. and Moses B. I. Goddard, and John Carter Brown and Robert H. Ives, all Providence, Rhode Island, capitalists, together 93,000 acres; and Jacob Shoff, a Nebraska speculator, 29,206 acres. In the 10 years following the adoption of the homestead law, 41 individuals and partnerships entered 488,000 acres in Nebraska, all well east of the 99th meridian, for nothing farther west was then open to unlimited entry. In Kansas 83 entries included 406,000 acres. To a somewhat less extent potential agricultural land was also being entered in Wisconsin, Minnesota, California, and Oregon by speculators.

We have some interesting data on Pierce County, Nebraska, to which allusion was made in the previous chapter. Pierce was a reasonably promising county and, as was commonly the case, speculators acquired much of the better land shown on modern soil surveys before many settlers appeared. It is possible that some of the cash and warrant entries shown in the following table were made by settlers but most of them were made by speculators.

By 1873, 179,920 acres—enough to satisfy 1,500 homesteaders—had been sold or entered with scrip and warrants, but only a few more than a hundred homestead entries had been filed.[17] As late as 1880 only 184 farms were found in the county by the census taker.

[17] Computed from Table 13 in John Arnett Caylor, "The Disposition of the Public Domain in Pierce County, Nebraska" (Ph.D. dissertation, University of Nebraska, 1951).

ORIGINAL LAND ENTRIES IN PIERCE COUNTY IN ACRES[a]

Year	Cash, Warrant & Scrip	Homestead and Timber Culture	Preemption
1867	160	320	----------
1868	360	720	----------
1869	5,120	4,160	----------
1870	44,880	3,120	----------
1871	52,520	3,200	----------
1872	63,840	3,400	----------
1873	13,040	1,800	160
1874	360	3,440	----------
1875	320	1,080	----------
1876	400	680	----------
1877	480	680	----------
1878	5,200	----------	----------
1879	160	13,440	----------
1880	880	8,040	320
1881	1,200	7,240	560
1882	9,640	14,400	560
1883	10,120	5,960	1,200
1884	680	2,720	2,400
1885	480	1,400	2,400
1886	320	960	1,920

[a] See note 17.

Southern Homestead Act

While public land in the pineries and on the iron ranges of the Lake States, in the prairies east of the 97th meridian in Kansas and Nebraska, in the Central Valley of California and the Willamette Valley of Oregon, and in parts of Colorado and Washington was being snapped up in great volume by men of means, land in the five southern public land states was reserved for settlers. During the Civil War, administration of these public lands had been assumed by the states of Alabama, Mississippi, Louisiana, Arkansas, and Florida, which generally followed policies already in operation. Alabama and Louisiana retained the same price, preemption, graduation, and school reservations and Alabama actually adopted a free grant measure though its Representatives in Congress had bitterly fought a homestead bill. Some sales were made but the war and all its obligations absorbed the attention of the

people too much to permit them to give thought to public lands.[18] With the conclusion of the war all sales, patents and other changes that may have been made were voided and the public lands were back where they had been before secession. In 1866 Congress was persuaded to adopt a measure that reserved all public lands in these five states for homesteaders only.

The Southern Homestead Act came about through the union of a number of congressional groups that had nothing in common except that each wanted restrictions placed on the disposal of the remaining southern lands. George W. Julian, earlier an abolitionist, was now the leader of a small group in Congress that wanted a land redistribution carried out in the South. These men had proposed, and during the war had secured, the adoption of two acts providing for the confiscation of the estates of the planter aristocrats who were in rebellion. They were seeking the division of these holdings into 40-acre tracts to be given to the freedmen, and the reservation of all remaining public lands in the five states for homestead applicants only. Essentially, the Southern Homestead Act was for Julian a land reform measure but he was also motivated by his hatred of the planters who had brought on the war. Others in Congress who supported the measure but were not land reformers, except for political reasons, were the "radical reconstructionists." They seemed to be thinking principally of the welfare of the Republican Party and its continuation in control of the country but they may have had some concern, as Julian did, for the welfare of the Negro, and thought of the act as one that would materially aid him.

The vote in the House on the southern homestead bill—there was no division in the Senate—was 112-29 with 41 abstentions. All 19 Representatives from the principal lumbering states, Maine, Michigan, Wisconsin, and Minnesota, voted; 17 were favorable and two opposed. Already the lumbermen millionaires were appearing in Congress. Two of them who were at least well along to that position, Philetus Sawyer of Wisconsin and John W. Longyear of Wisconsin, were among those voting yea. No great significance should be attached to this vote except in relation to its reversal 10 years later. It does seem fair to say that it was more a punitive measure than a land reform act for it is difficult to believe that tough-minded realists like Sawyer and Longyear and many others like them were influenced by land reform ideas.[19]

The Southern Homestead Act provided that the public lands in the five southern states should be reserved for homesteads only, and that for the first 2 years the unit of entry should be 80 acres. Until 1867 only citizens whose loyalty had been unquestioned during the Civil War could make entries.[20] If the object of the act was to aid the freedmen to obtain and develop small tracts as farms, it was a failure. The best of the Delta land and the alluvial lands elsewhere, and all the land suitable for cotton, had long since been selected and what was left was refuse land not previously regarded as desirable, and an abundance of relatively infertile land covered with heavy stands of longleaf pine and cyprus. Such land had little attraction for farmers, and its timber was not regarded as favorably as the white pine of the North. Moreover, capital was needed to develop the lands and the freedmen and poor whites, for whom Julian had hoped

[18] For the management of the southern public lands during the Confederacy see Paul W. Gates, *Agriculture and the Civil War* (New York, 1965), pp. 296–99.

[19] *House Journal,* 39th Cong., 1st sess., 1865–66 (Serial No. 1243), pp. 250–51; Richard N. Current, *Pine Logs and Politics, A Life of Philetus Sawyer* (Madison, Wis., 1950), *passim;* Kenneth M. Stampp, *The Era of Reconstruction, 1865–1877* (New York, 1965), pp. 124 ff.

[20] 14 Stat. 66–67.

the act would be a real boon, were not in a position to take advantage of it. Because the act only applied to the five ex-Confederate states, southerners regarded it as part of the hated reconstruction measures instead of as a land reform measure. They were resolved to have it repealed, along with all the other punitive measures the triumphant radicals had put through.

Julian came close to achieving a second step in his land reform program for the South. This was a measure to provide for the forfeiture of the 5 million acres of land earlier granted to the southern railroads. There was some demand in the South for the forfeiture of these lands since the railroads had not been built and the land might have proved suitable for settlement in small tracts. The measure passed the House after one of the railroads had succeeded in getting its grant excluded, but only by a narrow margin; the bill never got out of the Senate Committee on Public Lands. It was one thing to reserve public lands for settlers but quite another to forfeit railroad land grants, even though not earned.[21]

Analysis of the southern homestead entries under the Act of 1866 are not very meaningful unless a further study be made of the land ownership after the title had passed to the homesteader, to determine whether he was actually trying to make a farm of his land or was acting for lumber interests, as was charged. The proportion of entire entries carried to patent in 5 years in the southern states was the smallest of all states, ranging from 20 percent in Mississippi to 37 percent in Alabama. A few may have been commuted though the total of all sales by cash and warrants in the five states was only 12,216 acres from 1867 to 1876, or the equivalent of 152 homesteads of 80 acres. Some of the homesteads were doubtless for temporary occupancy while the timber was being stripped off and were then abandoned. Perhaps more were abandoned by actual settlers as too unpromising to struggle with further.

ORIGINAL HOMESTEAD ENTRIES IN THE FIVE SOUTHERN PUBLIC LAND STATES 1866–1876[a]

State	Number of Original Homestead Entries	Acreage
Alabama	16,288	1,547,197
Arkansas	26,405	2,367,884
Louisiana	6,451	747,377
Florida	8,745	968,391
Mississippi	8,397	758,456

[a] Compiled from *GLO Reports*, 1866–76.

Southern representatives not only found the Southern Homestead Act rankly discriminatory but they also maintained that it retarded the development of the South. Until the act was repealed the lumber industry in their states could not flourish, they declared. On the other hand S. S. Burdett, Commissioner of the General Land Office, who also advocated repeal, argued in 1875 that these southern timbered areas were attracting great attention: "they have been subject to wholesale depredations, their product forming the basis of a large commerce, employing extensive mills for manufacture, ships for transportation. . . ." The law encouraged people to file for homesteads on heavily timbered tracts and to abandon them when they had cut all they found profitable. The United States Treasury was thus deprived of a large income. Burdett thought the act not only discriminated against the South but also against southern holders of land warrants and scrip who had either to sell their rights to speculators at a ruinous dis-

[21] I have dealt with this measure and the Southern Homestead Act in "Federal Land Policy in the South, 1866–1868," *Journal of Southern History*, VI (August 1940), 303 ff.

count or to file their entries outside the South.[22]

Repeal of Southern Homestead

Repeal of the Act of 1866 was kept before Congress until it was achieved in 1876. The strongest and most articulate opposition to repeal came from the land reformers, now led by William S. Holman of Indiana. Their objective was to extend the restrictions of the Southern Homestead Act to all public lands, thereby bringing to an end the right of unlimited purchase of public lands and achieving the reform for which Greeley and Julian had long worked. They were ultimately to win, but for the time being they went down to defeat. Congress was more influenced by the recommendations of Commissioners Burdett and Williamson and Senators James L. Alcorn of Mississippi and Powell Clayton of Arkansas, who advocated repeal and classification and appraisal of all timber lands in the South as well as elsewhere, and their public sale at not less than $2.50 an acre or at their appraised value, if higher. Alcorn and Clayton maintained that timber stealing was widespread because land could be purchased only in small tracts and that many a homestead had been established to gain the right to cut off the timber and was then abandoned. Hooking of timber from the public lands had long been widely practiced even by the most reputable lumbermen. Shocked at the stories of timber stealing from public lands in the South, Carl Schurz, Secretary of the Interior, ordered prosecution of all guilty parties and seizure of their logs in 1877. Politics forced a compromise, but some of the large purchases made in 1880 and later were the result of this short period of prosecution of timber thieves.[23] The charges of Alcorn and Clayton, the clear evidence of the loss of millions of feet of timber from the public lands, the growing interest of commercial lumbermen outside the South in investments in that region, and southern detestation of the Act of 1866 led to its repeal in 1876. Apprasial of lands and a special act for the sale of timberlands was not adopted at this time though the following year the Timber and Stone Act provided for the sale of timberlands for personal use in tracts not over 160 acres at $2.50 an acre. This measure was not made applicable to the South, however, until 1892.[24]

The lineup of votes in both Houses on the measure to repeal the Southern Homestead Act provides an instructive sectional division. Southern Representatives and Senators were almost solidly in favor of repeal, while in the House Representatives

[22] *GLO Annual Report, 1875,* pp. 9–19. In addition to repeal of the Act of 1866 Burdett urged that fir and pine lands should not be subject to preemption or homestead entry but should be classified, appraised and offered at sale at no less than their appraised value. He doubted the value of the preemption law for settlers, thought it was being too commonly used for the benefit of speculators, and recommended that it be consolidated with the homestead law. As for the land beyond the 100th meridian which was not suitable for irrigation he considered a leasing policy but discarded it in place of granting the same unlimited right of purchase which had existed in states farther east, at the $1.25 price. He seems to have been quite unaware of the strong anti-monopoly feeling in the western states that would never have permitted reviving the right of unlimited purchase.

[23] Speaking of one of the largest sawmills in the South, owned by a highly successful lumberman who had been getting his logs from public lands on the Pearl River, Nollie Hickman says "the passing of the timber lands into private ownership forced the company to turn elsewhere for supplies of raw materials." Hickman has summarized information in government documents concerning the degree to which loggers and sawmill owners had pilfered from public lands and gives the value of the logs of 10 operators who are named. *Mississippi Harvest, Lumbering in the Longleaf Pine Belt, 1840–1915* (University of Mississippi, 1962), pp. 49, 53, 68 ff.

[24] *GLO Annual Report, 1874,* pp. 6, 9; *1875,* p. 9; *1876,* p. 20.

from the four lumbering states of Maine, Michigan, Wisconsin, and Minnesota voted 12-2 against repeal. Senators from the same states voted 4-4 on repeal. Omar Conger of Michigan, who in the previous Congress had voted against repeal, admitted that the lumber operators of his district did not approve of his stand and were actually waiting in Florida, Louisiana, and Arkansas to buy the southern lands as soon as they were open to entry. In 1876 he abstained from voting.[25] Nathan B. Bradley, owner and operator of one of the largest mills in Bay City, Michigan, voted against repeal. Six years later he began buying longleaf pine land in Louisiana and before the sales were closed had entered 111,000 acres.

The Act of June 22, 1876, repealing the prohibition of public land sales in the five southern states provided that the remaining lands should first be offered at public sale and thereafter be opened to private entry in lots of any size. This step was clearly running counter to the position of the land reform element, but the excuse was the same as was urged for offering land in Wisconsin, Minnesota, Colorado, Michigan, and Washington after 1862: the land was timbered, was being stripped of its major resource by timber thieves, and the cost and trouble of protecting it was so great that offering the land at public sale appeared the best solution.[26] In 1879 the Commissioner of the Land Office announced that all the public lands of Florida, Arkansas, and Mississippi had been surveyed and offered and the balance of unoffered land, except for some mineral reservations, would be put up for sale shortly.[27] There was no immediate rush for the southern lands, not at least until the threat of prosecution induced some parties to buy the land on which they had been cutting timber, nor, indeed, did there appear any letup in timber stealing. Sales in the years 1876 to 1879 in these five public land states amounted to only 35,277 acres. But by 1880 circumstances had changed. Representatives of northern millmen whose timber resources in Michigan and Wisconsin were approaching exhaustion now appeared at the land offices and were cruising the woods for likely stands of timber. Among the large acquisitions were the purchase of 100,000 acres in Arkansas by the Lindsay Land and Lumber Company of Rock Island, Illinois, a company in which Frederick Weyerhaeuser had a substantial interest; the 136,000 acres in Mississippi purchased by Delos Blodgett of Grand Rapids, Michigan; and the 109,000 acres in Louisiana purchased by Franklin H. Head of Chicago. All of these and many other northern lumber interests bought directly from the Federal government, from the railroads, the states, and from other private owners.

Southern Timberlands

No longer could the southern millmen and loggers expect to find an adequate supply of logs available to them on government land at the cost only of cutting. To provide logs for future operation they now had to buy timberland from the government or stumpage or land from the northern timber barons. They could be sure that the new breed of northern owners would not tolerate the alleged cutting on their land that the government had permitted on public land. Consequently, they had to join in the rush to acquire the better stands of timber. Commissioner Williamson's statement of 1876 that "an acre of good pine land is worth about . . . $30" is surely somewhat absurd—there is little

[25] *Cong. Record*, 32d Cong., 1st sess., June 5, 1874, p. 4634; *ibid.*, 44th Cong., 1st sess., Feb. 15, June 7, 1876, pp. 1090 and 3655.

[26] See the justification of Commissioner N. C. McFarland for the offering of 3 million acres in the Duluth Land District of Minnesota in the fiscal year 1883, *GLO Annual Report, 1882*, p. 27.

[27] *GLO Annual Report, 1879*, pp. 221–22.

evidence of private individuals getting such a price at that time except for the heaviest and best located stands—but if Williamson meant that the land might soon be worth that figure he was not far wrong. Timberland values had skyrocketed in the past and were again to do so in the eighties when scarcity and depletion talk abounded. It was appreciated that quick fortunes had been made and professional speculators in timberlands were looking for the main chance in Michigan, Wisconsin, and Minnesota in the sixties and seventies, in the southern states in the eighties, and in California, Oregon, and Washington throughout the years after the Civil War.

Most of the investors were also owners of mills and distributing yards, had already invested in stumpage and knew something about cruising timbered tracts. They would have preferred not to invest in timberlands that might not be suitable for cutting for more than 10 years for the costs and the risks were high—interest, taxes, danger of fire, blow downs, and timber hookers. The surveyors' notes which many landlookers had depended on in the past were too general to enable buyers to select lands from them. Investment in timberland planned for a decade or so called for careful estimates, and equally careful entries so as not to include too much barren or poorly timbered land, or land difficult of access. But when entries were being rapidly made and the lands that appeared to be most promising were being taken off the market investors had to move speedily.

In 1887 and 1888, when the southern timberlands were being swept into private ownership at a rapid rate, southerners expressed the fear that they were being purchased for speculation only and questioned the wisdom of opening them to absentee ownership. The large sales, which reached their peak in 1888 (1,223,772), had not been followed by any considerable development of the southern lumber industry.

PURCHASES OF 5,000 OR MORE ACRES OF SOUTHERN TIMBERLANDS, 1880–1890[a]

	By Northern Individuals and Groups	By Southern Individuals and Groups
	Acres	
Louisiana	1,370,332	261,932
Mississippi	889,359	134,270
Alabama	121,093	463,242
Arkansas	114,334	163,946
Florida	64,243	125,172
Total	2,559,361	1,168,562

[a] Gates, "Federal Land Policies in the South," 319–323.

Northern timber barons were still operating their northern mills and holding their southern lands for speculation or for later development.[28] Alarmed southern leaders feared that the resources of the southern states were being locked up by these large purchases and would not be utilized until the white pine of the North as well as its spruce, red pine, and other cheaper woods should become exhausted. They succeeded in pushing through Congress on May 14, 1888, a measure suspending all further sales of land at private entry in Mississippi, Arkansas, and Alabama until action was taken on more far-reaching legislation then under consideration or until the end of the session. Only homestead entries were to be permitted. Nine weeks later a joint resolution was enacted adding Florida and Louisiana to the three in which sales at private entry were suspended.[29]

Scramble to Secure Land

It was not only the longleaf pine and cypress lands of the South that were in de-

[28] *Northwestern Lumberman*, May 28, 1887, p. 1, quoting a Louisiana paper; Nollie Hickman, *Mississippi Harvest*, p. 62.

[29] 25 Stat. 622, 626. There were 14,398,148 unsold and unappropriated acres in the five states in 1890, as follows: Alabama, 1,105,060; Arkansas, 4,902,329; Florida, 5,624,426; Louisiana, 1,358,853; and Mississippi, 1,407,480.

mand in the eighties. Elsewhere the supply of public land was being exhausted and the threat of restricting the quantity individuals might enter produced a scramble to secure land before limitations were imposed. Pine and redwood timberland in California, Douglas-fir in Washington and Oregon, the remaining stands of white pine in Minnesota and Wisconsin, and the best of the remaining lands suitable for grazing or possibly wheat raising in Dakota Territory, Kansas, and Nebraska attracted preemptioners; in many areas they were the only ones who could buy land. Sales which had dropped during the years 1875-79 to the lowest point since the 1820's, averaging less than a million acres in the 5-year period, more than quadrupled, averaging 4,192,351 acres for the years 1880 to 1888. During these years the General Land Office compiled totals of the sales of "land subject to private entry," that is, offered land open to unrestricted entry, separate from the totals of preemption sales, which were made on land not open to "private entry," being "unoffered" land. The table for the United States illustrates how the scramble for both offered and unoffered land was proceeding in the eighties. The location by states of the private and preemption entries for these last years of great activity is helpful in showing where attention was concentrated.

Sales of Offered and Unoffered Federal Land[a]
(Acres)

Year	Offered	Unoffered or Preemption Sales	Total Public Land Sales	Preemptions on Indian Land
1880				
1881	668,598	721,146	1,587,617	765,221
1882	1,924,496	1,351,380	3,611,530	310,386
1883	2,453,024	2,285,710	5,547,610	399,235
1884	1,750,316	3,206,095	6,317,847	697,129
1885	476,121	2,311,296	3,912,450	881,850
1886	631,981	2,279,218	3,773,498	1,132,596
1887	1,523,546	3,172,411	5,587,910	746,637
1889	156,476	2,902,028	3,684,549	117,342

[a] Compiled from *GLO Reports*. The total public land sales include offered and unoffered sales, timber and stone entries, desert land entries, and smaller miscellaneous entries.

This was the last period of large purchases of land. Land reform elements, which are discussed below, finally succeeded in moving Congress to provide that "no public lands of the United States, except those in the State of Missouri shall be subject to private entry."[30]

Many of these large purchases of timberland were made to meet future needs of lumbermen or for resale to lumbermen. This is clear from the journals of the lumber trade which recorded sales made by the original purchasers to actual operators. Corroborative evidence is to be found in a report of the United States Bureau of Corporations for 1913 which analyzed sales of Louisiana timberlands during the 1880's totaling a million acres. Here one finds that the Long Bell Lumber Company, whose total holdings eventually reached more than a million acres, acquired 203,000 acres in the Calcasieu Valley of Louisiana, all of which was bought from 19 other individuals and groups who had entered the lands between 1880 and 1888. Numer-

[30] *Ibid.*, p. 845.

LARGEST CASH SALES INCLUDING PREEMPTIONS OUTSIDE THE SOUTH
(ACRES)

Year	California	Colorado	Kansas	Michigan	Minnesota	Nebraska	Oregon	Washington	Wisconsin	Dakota Territory
1883	359,803	141,434	62,012	241,364	738,345	116,889	147,073	248,305	338,434	1,496,788
1884	435,313	180,139	72,948	202,036	397,979	184,725	154,438	322,620	160,330	2,159,398
1885	369,559	171,401	132,725	25,822	145,478	298,748	119,083	136,348	56,659	1,196,691
1886	326,403	252,598	396,234	47,778	110,702	477,596	114,824	96,885	131,845	705,060
1887	606,387	287,487	1,012,345	85,137	330,217	620,936	137,934	95,367	200,076	672,135
1888	769,797	651,276	986,789	47,543	147,123	635,600	140,483	107,769	50,003	474,324

From GLO *Reports*.

ous other groups acquired large tracts by buying from others at second hand.[31]

During these last years of public land sales when rich, timbered lands were the major attraction, rumors of special privileges being extended to favored individuals at the pinery land offices began to circulate. A device that had been used in prairie land offices before the Civil War now came into common use in the pinery land offices. The register and the receiver or their clerks would be promised some substantial benefit by a timber speculator if they would agree to withhold certain townships of land from private sale until interested parties could cruise them. A flagrant and well-documented instance of this occurred at the Eau Claire, Wisconsin, office in 1865-69. Henry C. Putnam, well-known dealer in pine lands, was clerk in the office at a time when Francis Palms of Detroit, Henry W. Sage and John McGraw of Ithaca, New York, Ezra Cornell, the millionaire telegraph contractor and founder of Cornell University, and numerous other wealthy investors in pine lands, most of them experienced in the lumber industry, were searching for choice pine land on the Chippewa and attempting to omit the numerous poor tracts. Through Putnam they found it possible to hold land for a time, without making a legal land entry. Charges were soon brought against the Eau Claire "Pine Land Ring," as the group working through Putnam was called; an investigation was held and though no indictments or dismissals were brought, Putnam was ordered excluded from access to the entry volumes.

The same practice existed at most if not all the pinery land offices. Isaac Stephenson, a millionaire lumberman operating in both Michigan and Wisconsin where he

[31] I have traced some of these large holdings to purchases from speculators who bought in the five states from 1882–88, in "Federal Land Policy in the South," *loc. cit.*, pp. 323–25.

entered with associates 137,000 acres, indiscreetly told of a practice that enabled the registers and receivers to withhold land desired by favored lumbermen—who naturally compensated the officials well. He speaks of the "unscrupulousness" of the land officers whose rule it was, when a nonfavored individual tried to enter lands, to declare that they had already been entered. The officer had "a list of 'dummies' always at hand who were put down as the purchaser of the property, which was afterward sold at a neat profit to himself and his co-conspirators who supplied the money. The foundations of not a few American fortunes were laid in this reprehensible fashion." Whether Stephenson was a beneficiary of such practices is not clear but it is likely that most successful lumbermen resorted to them.[32] But after all, the lumbermen who organized to prevent competition at a public sale were doing nothing that settlers had not been doing since the first appearance of the claims associations. The fact is that western society held Federal ownership in little regard; few people questioned the right of the citizen or the lumberman to take timber from public lands, to agree not to bid against others at the public sale, even to sign affidavits that land being entered under the Preemption and Homestead Acts were intended for farms when they really intended to sell to lumbermen as soon as the patent was issued. A Wisconsin Congressman, in line with these views, declared that the true government policy toward lumbermen was to allow them "to use a portion of the timber" on public lands "without stint, as a sort of bounty for the hardships they have undergone in piloting the way to this country."[33]

[32] Isaac Stephenson, *Recollections of A Long Life, 1829–1915* (Chicago, 1915), p. 120. For the methods of frustrating competition at the sales at Eau Claire and the influence of the pine land ring, see Gates, *Wisconsin Pine Lands of Cornell University,* pp. 107 ff. James Willard Hurst in *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1636–1915* (Cambridge, Mass., 1964), acknowledges collusion at public sales in Wisconsin.

[33] Hurst, *Law and Economic Growth,* p. 96.

The West and Land Matters

As long as western members of Congress were writing land legislation they thought the West wanted, and as long as Interior and Land Office administrators were interpreting and administering those laws in a way satisfactory to the West, allowing always for flexibility, there was little conflict between the Washington authorities and western people. But if the administration became inflexible and threatened to interpret laws in a way the West did not like, it could, and on a number of occasions did, incur the wrath of the West—which brought about the discharge of the Federal timber agents, the dropping of John Wilson as Commissioner of the General Land Office in the fifties, the dismissal of William A. J. Sparks, Cleveland's Commissioner of the General Land Office, and it struck hard at Gifford Pinchot's conception of conservation.

As the West increasingly had its way in land matters, it came to have affection for the old land system and although parts of it seem to us irreconcilable with new measures, the West preferred to retain them. It wished to keep preemption, long a basic feature, although preemption no longer seemed necessary after homestead had been adopted. The West was willing to abandon cash sales in newly surveyed areas but not for lands long since proclaimed for sale. It approved of the railroad land grants begun in 1850, and did not become opposed to them until the railroads made themselves so obnoxious by their discriminatory rate structures and unwillingness to pay taxes on their land grants as to arouse a crusade for forfeiture of their grants. Land granted to the states for education, canals, or railroads continued to be sold at the government minimum or above long

after the United States began to grant free homesteads, first of a quarter-section, later of 320, and finally of 640 acres.

Indian Treaties as Land Transfer Device

The West was ambivalent on one change or innovation: the use of the treaty making power to acquire land from the Indians and to provide for the disposal of land so acquired altogether outside the public land system. The nonstatutory method of land disposal began innocently enough, perhaps in early Indian treaties when it seemed advisable to grant one or more chiefs something extra in the way of an alienable allotment of land that they might sell or exchange for goods. By 1826 it had become an important means of obtaining the support of chiefs for cessions, particularly for the Miami and Potawatomi lands in Indiana.[34] In 1830 and 1832 it was greatly broadened in the treaties with the Creeks, Choctaws, and Chickasaws of Mississippi and Alabama. To secure approval of the surrenders, it was provided in these treaties that thousands of individual allotments should be made ranging from 160 acres up to a number of sections. The allotments immediately became the object of white greed and quickly passed out of the hands of the Indians. In this way several million acres in these two states never became a part of the public domain, were not subject to preemption, and fell largely into the hands of speculators. At the time there seems to have been no great outcry against the use of the treaty making process to keep large blocks of land from going through the public land system, except that the Jackson administration was charged with aiding speculators to gain ownership of great blocks of land, a charge which was quite true for other reasons and regardless of the Indian lands.

A second device to transfer land to buyers without having it become part of the public domain and subject to preemption was to provide in treaties that after individual allotments had been made the balance of the land should be ceded "in trust" and sold. These trust lands were not sold under the general sales laws in which settlers were conceded a preference right to purchase. Largest of these sales was that of the Chickasaw trust lands in Mississippi and Alabama. After the first sale the lands were to be steeply graduated in price to make sure that they would be sold speedily, since the cost of administering them was required under the treaty to be paid by the Indians. The net returns were to be added to their endowed funds.[35]

The nonstatutory methods of land disposal developed within the treaty making power aroused deep emotions among western people who feared that, if not halted, it might ultimately replace the statutory system. In the treaties negotiated with the intruded Indians along the eastern front of Kansas in 1853 and 1854, alienable allotments, inalienable allotments, trust lands, and diminished reserves were offered the Indians to induce them to surrender the greater part of their reservations. The trust lands were to be appraised and sold at public auction at not less than the appraised price. They were not open to preemption, nor could military land warrants or other scrip be offered in payment of them. Hence their cost to settlers would be substantially greater than public lands. The first public sales of land in 1856 and 1857 in the terri-

[34] I have described the use of allotments in negotiations with the Miami and Potawatomi Indians in my introduction to: Nellie Armstrong Robertson and Dorothy Riker (eds.), *The John Tipton Papers* (3 vols., Indianapolis, 1942), I:3–58. For earlier use of allotments see J. P. Kinney, *A Continent Lost—A Civilization Won. Indian Land Tenure in America* (Baltimore, 1937), pp. 81 ff.

[35] Mary Elizabeth Young traced the events leading to the treaties with the Creeks, Cherokees, and Chickasaws and the conduct of the sales in *Redskins, Ruffleshirts and Rednecks. Indian Allotments in Alabama and Mississippi, 1830–1860* (Norman, Okla., 1961), *passim.*

tory were thus the Delaware, Iowa, and Confederated Peoria trust lands. They amounted to 860,163 acres and cost buyers an average price of $1.77 an acre instead of the $.90 to $1.10 an acre public lands could be acquired for with land warrants. Trust sales, as a way of getting around the preemption law, did not please Kansans who were convinced that an inner circle of white officers was profiting from the management of the Indian lands. They became sure of this when they saw what was happening to the nearly half a million acres of individual allotments the Indians had received, some of which required government approval before they could be conveyed. One small reserve fell directly into the hands of a group working closely with government officers. When next a number of treaties provided for the sale of six entire reservations to railroads, the largest being the 8 million-acre Osage Reservation, Kansas exploded in wrath and forced the withdrawal of the treaty for the Osage sale.

Congressional opponents of abuse of the treaty making power used the Osage Treaty as a horrible example of the danger that the entire public land system might be destroyed by this new method of land disposal. Their continued attacks upon the treaty making power finally wore down its defenders. In 1870 the House of Representatives adopted an amendment to an appropriation bill that would end the treaty making power in Indian relations, but it was lost in conference. In 1871 the House had its way. After 5 or 6 years of defending its special prerogative or at times blandly ignoring attacks upon it, the Senate finally surrendered. An Act of March 3, 1871, made it no longer possible for administrative officers secretly to secure Indian approval of "treaties" which, with numerous important and highly significant provisions concerning land policy, became the law of the land when ratified in executive session by the Senate. Treaty making with Indians was thus ended.[36]

Although the Osage lands did not fall to the railroad by treaty, part of them came to it by virtue of a railroad land grant; the balance was held as trust lands and was neither subject to preemption nor homestead. More than two-fifths of the area of Kansas was either granted to railroads or passed to private ownership through the treaty making process.

The individual Indian allotments were enormously attractive to land-hungry whites living near reservations on which they could not otherwise expect to acquire farms. In many instances the Indians rapidly disposed of their allotments improvidently. The allotment policy having been well established in Mississippi, Alabama, Indiana, and Kansas, was rapidly developed thereafter, through agreements and legislation rather than treaties. It became a minor but increasingly important means for whites to acquire land. Even Indian reformers for a time came to think that the best way of integrating the Indian into the white culture was to make him an individual landowner dependent no longer on the bounty of the goverment but on the income from his land.[37] In 1887 Congress, by the Dawes Act, extended the practice of making allotments to all Indian groups, thereby accelerating the breakup of

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[36] *Cong. Globe,* 41st Cong., 3d sess., I, 765 and II, 1811 and App., p. 389. I have relied here on my *Fifty Million Acres,* Chap. VI, "Struggle over the Osage Reserve: The End of Treaty Making."

[37] A defective and very incomplete list of 11,072 patents conveying title to tracts generally of 160 to 640 acres is shown on p. 320, *Annual Report of the Commissioner of Indian Affairs, 1885* but if all those conveyed to the Chickasaws, Choctaws, and Creeks were included the number would be much larger. On allotments generally before 1887 see Laurence F. Schmeckebier, *The Office of Indian Affairs. Its History, Activities and Organization* (Baltimore, 1927), pp. 78 ff.; Young, *Redskins, Ruffleshirts and Rednecks, passim;* J. P. Kinney, *A Continent Lost—A Civilization Won,* pp. 81 ff.

the reservations and the transfer of land to white ownership.[38]

Monopolies and the Agrarian Movement

Most frontier farmers in the newer states, still struggling to make farms on the raw prairie or plains, had a marked agrarian philosophy and were acutely sensitive to what they called monopoly. Jackson had early raised the cry of monopoly against the Second United States Bank and for the remainder of the century individuals and institutions which westerners found reason to dislike were pilloried as monopolists and monopolies. Steamboat combinations on the Upper Mississippi, stockyards and grain elevators, railroads, the pooling devices used by lumbermen to control the running of logs, the American Land Company and other combinations of capitalists owning large quantities of land, the English and Scotch capitalists who seemed to some to be bent on dominating the cattle ranching industry, all were monopolists. Against them were arrayed "honest" farmers who, however, might be taking advantage of loopholes in the land laws to sell relinquishments, to enter land for others, to swear that they had made improvements—including a house 12 by 14 that might be nothing but a portable doll house 12 by 14 inches—but who could justify their actions because the system, the government, was allegedly on the side of the rich and powerful.

The first of these agrarian outbursts, the Granger Movement, failed to delve deeply into land questions and to demand far-reaching reform. The reason for the Grangers' lack of interest in the land question seems to be that they constituted the more successful farmers of Illinois and Iowa, men with substantial acreages who had large crops and carloads of livestock to sell and wanted cheaper rates on the railroads, not land or tax reforms that might threaten their interests.[39] Thereafter agrarian anti-monopolists placed high on their list of reforms the adoption of both Federal and state laws banning alien ownership of land, action to forfeit unearned railroad land grants and to compel the railroads to sell their undeveloped tracts, and to halt large entries of land by repealing the Cash Sale Act of 1820. Support for these proposals reached a high point in the eighties at a time when public land sales were again moving upward to 4, 5, and 6 million acres (exceeding every year since 1860). To some it appeared that the best of the public lands would soon be gone. Political platforms reflected this rising tide of opposition to policies that had enabled railroads, cattle companies, lumber companies, and speculative groups to acquire great quantities of land.

It was the Democrats who first took up the land reform cry, although before the war it had been the Republicans who championed free homesteads. In 1868, in national convention, they had declared "the public lands should be distributed as

[38] A later generation came to regret the allotment policy written into the Dawes Act. It led to the division of reserves into white-owned tracts and Indian-owned heirships and wardships too small to operate as a unit but left the reserves no longer viable for group economy. In 1862 there were included in Indian reservations 175 million acres and at the time of the adoption of the Dawes Act about 138 million acres. By 1935 the amount had declined to 52 million acres when there were many fewer Indians than in 1887 or earlier. Gates, "The Homestead Law in an Incongruous Land System," Vernon Carstensen (ed.), *The Public Lands. Studies in the History of the Public Domain* (Madison, Wis., 1963), p. 343; *Indian Land Tenure, Economic Status and Population Trends, Part X of the Supplementary Report of the Land Planning Committee to the National Resources Board* (Washington, 1935).

[39] In *Merchants, Farmers & Railroads. Railroad Regulation and New York State Politics, 1850–1887* (Cambridge, Mass., 1955), Lee Benson pictures the Granger Movement as a part of the efforts of merchants, shippers, and farmers to strip from railroad executives the power they exercised to maintain discriminatory rates.

widely as possible among the people, and should be disposed of either under the preemption or homestead laws, or sold in reasonable quantities, and to none but actual occupants. . . ." They also urged that in aiding public improvements the proceeds from the sale of land, not the land itself, should be offered. Railroad land grants were finally ended in 1871 but before that date their opponents had endeavored to include in the later grants a homestead clause requiring that the lands be sold in quarter-section tracts at $2.50 an acre to settlers only. Though included in some later grants, this clause was disregarded as being meaningless unless the General Land Office and Congress were prepared to compel the railroads to abide by it.

In 1872 and again in 1876 both Republicans and Democrats in their national conventions declared that the public lands should be held for settlers and expressed opposition to further grants of land to railroads. Both parties took essentially the same stand in 1880, 1884, and 1888, but the West was now demanding more. Its position was reflected in the Greenback Party platform of 1880 which called for the forfeiture of railroad land grants which had not been earned by construction or the owners of which had not conformed to the requirements of the law, and it demanded that the forfeited lands be held for settlers only. Both Republicans and Democrats adopted similar statements in 1884 while the Greenback Party urged the prohibition of alien ownership of land. By 1888 the more advanced parties were calling for land limitation, something Greeley had urged in 1862, the exclusion of aliens from ownership of land, exemption of homesteads from execution for debt or taxes, and the single tax.[40] This quick summary of party platform statements on land questions reflects the effort of politicians to meet the increasing demands of the West for land reform.

Hostility to railroads was a new phenomenon in the West. Earlier, in the fifties, every effort had been made to move Congress to grant lands for railroads no matter how dubious the projects might be, and scores of cities, towns, and counties, and some states not previously affected by the mania for state construction, had voted large sums to assist the construction of railroads. In the fifties the State of Missouri contributed $23,701,000 to railroads and local governments extended $8,335,000 in further aid. In Illinois local governments lent railroads $22 million, in Wisconsin $7,250,000, in Minnesota Territory $2,250,000, and in Iowa $7 million.[41]

The tide of public opinion began to turn against the railroads in the late sixties, and reached its height in the seventies. Among the factors accounting for this reversal of attitude was the failure of some companies to build their lines; others diverted their lines from routes originally suggested; some railroads withheld their lands from sale and development; there was resentment against their pricing and collection policies, and against the fact that the railroads were not paying taxes on their unsold lands and were discriminating against the small shipper in both service and rates. The West, or a considerable body of thought in the West, now turned against the railroads and demanded that no further grants be made to them, that further restrictions be placed in measures

[40] Edward Stanwood, *History of the Presidency* (Boston, 1898), summarizes the platforms of all the parties.

[41] Harry Pierce was one of the first to study municipal, town, and county aid to railroads in his *Railroads of New York. A Study of Government Aid, 1826–1875* (Cambridge, Mass., 1953). A valuable study is Kathleen Bessie Jacklin, "Local Aid to Railroads in Illinois, 1848–1870" (Master's thesis, Cornell University, 1957). Carter Goodrich has brought together the statistical summaries of government aid in *Government Promotion of American Canals and Railroads, 1800–1890* (New York, 1960).

extending the life of existing grants, and that unearned grants be forfeited. In 1869, William S. Holman and George W. Julian, the leaders of the reform group in the House, induced that body to adopt a resolution declaring that "grants of public lands to corporations ought to be discontinued." The second part of the resolution, however, which declared that the "whole of such lands ought to be held as a sacred trust to secure homesteads to actual settlers," was rejected.[42] Holman was successful in the next Congress in securing the adoption of a broader resolution declaring that "every consideration of public policy and equal justice to the whole people requires that the public lands of the United States should be held for the exclusive purpose of securing homesteads to actual settlers under the homestead and preemption laws" and urging that further land grants to railroads "ought to be discontinued. . . ."[43] How seriously the members of the House took the Holman resolutions may be seen in the willingness of Congress within 12 months after the adoption of the resolution to vote a large grant to the Texas and Pacific Railroad. Only the most vigorous opposition by the land reformers prevented further grants from being made.

Homestead Clause in O. & C. Grant

Although its significance was not to be entirely realized until many years later, Julian did win a victory in 1869: an amendment to a bill to extend the land grant of the Oregon and California (the O.&C.) Railroad that required the grant to be sold in quantities no greater than 160 acres to actual settlers only for no more than $2.50 an acre. This was the famous "homestead clause." It first appeared in a House Resolution of July 24, 1868, which states as a matter of policy, and as an instruction to various House committees, that in future grants to railroads or corporations it should be required that the lands be sold in 160-acre lots to actual settlers at $2.50 an acre. The 1868 resolution also held that the lands should be sold on 4 years' credit, a feature not to be carried over in later amendments.[44] In 1869 Julian tried to add the homestead clause to a bill to extend the land grant for the construction of a wagon road from Eugene, Oregon, to the eastern border of the state but the House refused to accept it.[45] However, the members of the first session of the next Congress had become bored with the long arguments over the conflicting rights of two companies claiming jurisdiction over the Oregon and California Railroad; they accepted Julian's homestead amendment to a bill to determine that issue without discussion or division. On this amendment was to hang the legal case for the revestment (recovery) of perhaps the most valuable timberlands (2,891,000 acres) the United States government owns today.[46]

Julian may well have been surprised at the ease with which his amendment was adopted by the House and subsequently approved by the Senate, again without discussion, but he probably had doubts as to how effectively the General Land Office would enforce it. As events turned out, it was not enforced. Of the total earned grant of 3,728,000 acres, 813,000 acres had been sold by 1908, when all sales were suspended; of this total 515,000 acres were sold at more than $2.50 an acre and in lots well in excess of 160 acres, 170,000

[42] Resolution of Jan. 18, 1869, *Cong. Globe,* 40th Cong., 2d sess., p. 424.

[43] *Cong. Globe,* 41st Cong., 2d sess., p. 2095.

[44] *Cong. Globe,* 40th Cong., 2d sess., pp. 4428–30.

[45] *Cong. Globe,* 40th Cong., 3d sess., March 2, 1869, p. 1821.

[46] *Cong. Globe,* 41st Cong., 1 sess., April 9, 1869, p. 704. For a careful study of the long and involved litigation and congressional history of the Oregon and California land grant see David Maldwyn Ellis, "The Oregon and California Railroad Land Grant, 1866–1945," *Pacific Northwest Quarterly,* XXXIX (October 1948), 253 ff.

acres were sold in 160-acre lots but at more than $2.50 an acre, and only 127,000 acres were sold as the amendment provided. The average price for which the land sold was about $5 an acre.[47]

Congress added what was essentially the homestead clause to a measure to renew a land grant for a railroad to extend from Montgomery, Alabama, to the Tennessee state line and to a bill to extend a former grant to aid in the construction of a military wagon road from Coos Bay to Roseburg, in Oregon. In the latter case, because of failure to carry out the requirement, the remaining lands—some 96,000 acres—were revested in the United States and have since been administered along with the O. & C. lands. Congress also wrote into an act to grant land to the Texas and Pacific Railroad a requirement that all lands thus granted which had not been sold within 3 years after the completion of the road were to be subject to settlement and preemption "like other public lands" at $2.50 an acre. This last major grant was later forfeited.[48]

Unused Railroad Grants

Reformers next turned their attention to the unearned grants. In response to their demands Congress forfeited a grant in Louisiana in 1870, in 1874 two small grants in California, and in 1876 and 1877 two grants in Kansas. All these actions were taken either at the request of the state legislatures or in agreement with many interests in the states. Altogether, 667,741 acres of land were thus forfeited and restored either to private entry (unrestricted entry) or were held for homesteaders and preemptors.[49] Forfeitures reached a high point in the eighties with the enactment of a number of special forfeiture acts affecting two large grants in Arizona and New Mexico—the Atlantic and Pacific and the Texas Pacific. These, with three other smaller grants, came to 28,252,747 acres. These victories only whetted the appetite of the land reformers who now wanted a general forfeiture act to require action against the largest of the railroad grants, the Northern Pacific. In 1890, a general act was adopted but only after safeguarding features had been included which excluded its application to the more valuable of the Northern Pacific lands. Under this act a total of 5,627,438 acres were forfeited.[50]

Associated with the movement for the forfeiture of railroad land grants whose conditions had not been fulfilled, was the demand for the restoration to public entry of an estimated 100 million acres that had been withdrawn at the time the grants were made and many years later were still unearned and not released from the withdrawal orders. During this stage no preemption, homestead, or other right or improvement could be made on the land.[51] Numerous were the complaints

[47] Ellis, *loc. cit.*, p. 300.

[48] Acts of March 3, 1869 and of March 3, 1871, 15 Stat. 340 and 16 Stat. 576 and 580; Ellis, *loc. cit.*, p. 274.

[49] David Maldyn Ellis, "The Forfeiture of Railroad Land Grants" (Master's thesis, Cornell University, 1939), pp. 24 ff.

[50] I have borrowed heavily from Ellis's master's thesis cited above and the summary published in the *Mississippi Valley Historical Review*, XXXIII (June 1946), 27 ff., as "The Forfeiture of Railroad Land Grants, 1867–1894."

[51] Almost 200 million acres were promised either states or railroads for construction but many millions were lost through prior entries. The total withdrawals probably were much larger than 100 million acres, but possibly the amount withdrawn at any one time may have been no larger. Much of the mileage was built and the railroad lands thus earned were available for conveyance to the companies. Both the granted and the reserved lands were withheld for too many years, the settlers felt, though the Land Office tried to restore to entry the reserved sections when the railroad had selected its lands. Most criticized was the withholding of granted but unearned lands in the primary area and even more so, the alternate sections in the indemnity area. Ellis, "The Forfeiture of the Rail-

(Cont. on p. 458.)

against the large withdrawals which immobilized so much land and prevented areas from developing. William A. J. Sparks, in his first annual report as Commissioner of the General Land Office in 1885, took a strong position questioning the legality of these withdrawal orders, now in use for 35 years, but for which he could find no actual authority. Early granting acts had provided for the return to the public domain of the lands granted and withdrawn if the railroad was not completed within 10 years. Forty of the 70-odd railroads receiving land for construction had failed to complete their lines within the required time, and Congress was now being importuned to make extensions for many of them. But western critics were questioning how much longer these grants should be withheld from development in the hope that some time in the future the lines would be built. It was commonly assumed that failure to build within the established time limit would automatically lead to cancellation of the grants and the return of the lands to the public domain. In 1874, however, the Supreme Court declared in the case of *Schulenberg v. Harriman* that only by congressional action could grants be forfeited and until such action was taken the grants remained in effect and subject to disposal as in the past.[52]

Anyone familiar with western attitudes toward public lands, especially withdrawn lands withheld from development by Executive orders, or anyone who had seen white intrusions on Indian reservations could have predicted that the withdrawal orders would be generally disregarded by claim makers, whether settlers or not. This proved to be the case. Although Commissioners of the General Land Office were not in the forefront of the land reform movement, N. C. McFarland in 1882 did feel it necessary to bring to the attention of his chief, Henry M. Teller, the serious embarrassment caused by the failure of Congress either to renew lapsed grants or declare them forfeited. "Large number of settlers are occupying such lands [neither earned nor forfeited], and it is important to them to know whether they can receive their titles from the United States, or whether they will be required to purchase them from the railroad companies. The prevailing uncertainty necessarily retards improvements and impairs values. New applications are constantly being made to enter the withdrawn lands under the public land laws. I deem it of pressing importance to the public interests that Congress should take early action in respect to these

road Land Grants," *Mississippi Valley Historical Review,* XXXIII (June 1946), 28, accepts as the maximum amount of land possible in the grants for railroads 49 million acres to the states and 174 million acres to railroad corporations. For a defense of the Land Department in the matter of withdrawals see John B. Rae, "Development of Railway Land Subsidy Policy in the United States" (Ph.D. dissertation, Brown University, 1936), pp. 289 ff.

[52] 88 U.S. Reports 44. A number of proposed southern railroads received grants in 1856, the lands were withdrawn, and although maps of definite locations were filed no lands were approved to the states for the roads and neither was any mileage built and on the 10th anniversary of the original act "the reservation of lands for the road ceased. . . ." Included were the Gulf and Ship Island, the Tuscaloosa to Mobile, the Mobile to New Orleans, the Elyton and Beard's Bluff, the Savannah and Albany. Letter of N. C. McFarland. Commissioner, General Land Office, March 27, 1882, to S. J. Kirkwood, Secretary of the Interior, *H. Ex. Doc.,* 47th Cong., 1st sess., Vol. 22 (Serial No. 2030), No. 144, pp. 3–10. The Commissioner reported (p. 169) that of one Florida and two Alabama railroads for which Congress had granted land there was "no evidence of the construction of any part of these roads, as required by the acts," and that "the grants are presumed to have lapsed, but the lands have not been restored to the mass of public lands, Congress having taken no action to that end." The roads were the Coosa and Tennessee, the Mobile and Girard, and the Pensacola and Georgia; their grants called for 1,847,141 acres.

grants."[53] He reiterated his urgent request for action on the withdrawn lands in 1883 and in 1884 when Congress was considering forfeiture legislation McFarland suspended the issuing of patents in all cases where either House of Congress had passed legislation providing for forfeiture.[54]

McFarland was succeeded as Commissioner by William A. J. Sparks of Illinois who had served four terms in the House of Representatives. There he had principally distinguished himself by bitter altercations with "Sunset" Cox of New York and James B. Weaver of Iowa. In both instances his actions showed him excitable and in the heat of his emotion addicted to the use of unparliamentary language for which he had to make apologies.[55] The *Record* provides little indication that land questions absorbed his attention while he was in the House. True, he introduced a bill to repeal certain contigent land grants given railroad companies in Indian Territory, but it got nowhere.[56] The measure to which he seems to have given the greatest attention and most effective support was designed to transfer the Office of Indian Affairs from the Interior Department to the War Department. He was not returned to Congress in 1882, whether by his own choice or by his constituents is not clear, but the fact that the Illinois delegation urged Cleveland to appoint Sparks to office suggests that he was defeated.

Sparks' appointment as Commissioner was regarded as "moderately good," though clearly political by the *New York Times.* He was said to know something about the public land business having been receiver of the Edwardsville land office in Illinois from 1853 until it was closed in 1855. The *Times* added that he was "credited with a good deal of combativeness" which his friends declared would be employed "whenever he discovers any crooked transactions in his department."[57] In his first report, dated just 7 months after he was appointed, Sparks struck hard at "the great looseness and irregularity which have characterized the surveying service." In proceedings before Congress, the courts, and government officers, the most absurd claims had been erected into "impregnable rights," declared the new Commissioner. Sparks claimed that in validating state swampland selections the General Land Office had even overruled a statutory provision and in other instances had approved swampland selections adjacent to desert land selections; purchasers of California state land rights had been permitted, through laxness, to select valuable timberlands in lieu of the school sections; "fictitious and fraudulent" entries of land had been widely made by cattle interests beyond the 99th meridian; 40 percent of the homestead entries were estimated to be fraudulent; "official rulings" had protected "conspicuously fraudulent" entries under the Timber Culture Act; and depredations upon public timber were "universal, flagrant and limitless." Never had a responsible official so caustically and effectively condemned the Congress for the looseness with which it had drafted laws and for its failure to adopt the remedial measures suggested to it, or the courts for reading into laws meanings that Congress had not intended. No Commissioner had denounced his predecessors, except McFarland, for tolerating and even shielding evasions, improper actions and outright fraud.

On railroad land grants Sparks held that the withdrawals had been made without authority, and "sacredly reserved" for the railroads, that the legal rights of settlers

[53] *Ibid.,* p. 11.

[54] *Report* of 1883, p. 23, and *Report* of 1184, p. 11.

[55] *Cong. Record,* 43d Cong., 3d sess., Dec. 22, 1880, pp. 328–35.

[56] *Cong. Record,* 45th Cong., 2d sess., Jan. 21, 1878, p. 444.

[57] *New York Times,* March 25, 1885; *United States Official Register* (Washington, 1853), p. 139.

had been arbitrarily and cruelly denied, that railroads had been permitted more land than they were entitled to, that inadequate evidence had been accepted from the railroad for losses to be made good by indemnity selections, and that settlers on railroad lands had lost their improvements through an improper interpretation of the law. Sparks said that the Land Office and the courts had permitted railroads to challenge settler claims "at every point and in every stage, until it became easier for claimants to buy the land from the railroads." Authority to take timber from "adjacent" lands had been grossly abused, especially by the Northern Pacific, which had gone far afield to cut commercial timber. Sparks repeated earlier estimates that 100 million acres were withdrawn. His trenchant and well-publicized criticisms and his proposals for reform focused congressional attention upon land problems, as no administrator of the General Land Office had succeeded in doing, and produced results. By 1887 a total of 21,323,600 acres had been restored to entry, the claim of the Atlantic and Pacific Railroad for 1,500,000 acres for the extension of its line to San Francisco had been revoked, and Congress, needled by the clamor for reform which Sparks' report had stimulated, had authorized the administration to institute suits against railroads to which lands had been erroneously conveyed if they would not, on demand, reconvey them.[58] Cancelled preemption and homestead entries on erroneously conveyed lands were to be reinstated and President Cleveland ordered the claims of settlers found to be on lands claimed by the railroads to be given more careful consideration by the General Land Office.[59]

[58] Act of March 3, 1887, 24 Stat. 556; *GLO Annual Report, 1885,* pp. 26–46.

[59] John B. Rae has well summarized Sparks' work and the reforms he achieved in "The Development of Railway Land Subsidy Policy in the United States," pp. 291 ff.

Sparks' wholesale suspension of entries to allow adequate time for investigation and prevent fraudulent ones from going to patent, together with his disagreement with his superior, Lamar, on a legal matter, led to his resignation in 1887. His successor was not motivated by the same crusading spirit and reformist ideas, but was shocked at the extent of illegal entries made for second parties. In 1888 he summarized what were in a substantial measure the results of Sparks' extraordinarily active labors in restoring lands to entry. Included in this table were 2,108,417 acres within the primary grant area of the railroads, 21,323,600 acres of railroad indemnity lands, and 28,253,347 acres of forfeited railroad grants, or a total of 51,685,364 acres. In addition Sparks had recommended that 2,331,187 acres be recovered by legal action and that 54,323,996 acres of grants be recovered through forfeiture. As has been shown, Congress adopted a much more restricted measure than Sparks recommended which led to the forfeiture of only a small part of this total.[60]

Parallel with the movement for forfeiture of unearned railroad land grants and the restoration of the withdrawn lands to entry was agitation for and the final enactment of a measure to require that lands earned by railroads through construction should be taxable whether or not the railroads had paid for the cost of surveying and whether or not the patents had actually issued. In a series of decisions the Federal courts had declared that lands to which railroads were entitled because of construction but which were not patented or land on which the costs of surveying had not been paid were not subject to taxation. To railroads not originally required to pay the cost of sur-

[60] John B. Rae, "Commissioner Sparks and the Railroad Land Grants," *Mississippi Valley Historical Review,* XXV (September 1938), 211 ff.; *GLO Annual Report, 1888,* p. 17.

veying by the terms of their grants, Congress extended this requirement in 1876. Thus, companies could keep their large grants from taxation for as much as 20 years, even though they had contracted away the land on credit. The Kansas Pacific, for example, was paying taxes in Kansas and Colorado in 1886 on only 963,809 acres, whereas it had gross sales of 3,542,713 acres, some of which had been cancelled. It was charged by the *Junction City Union* of August 12, 1882, that tax exemption of most of its lands was saving the railroad $250,000 annually. Resident owners along its route who had patents to their land felt the discrimination which made it necessary for them to bear a heavier burden of taxation.

The settler element in Kansas and Nebraska now combined with the land reform group led by William S. Holman of Indiana and Lewis Payson of Illinois to remove from the railroads this valuable privilege. Measure after measure was introduced into both Houses of Congress. They passed the House but the Senate was obdurate or insisted on amendments unsatisfactory to the House until 1886, by which time pro-railroad sentiment was waning. On July 12 the two Houses managed to reconcile their differences and Cleveland signed a bill providing that no lands to which railroads had claim by reason of their grant and construction were to be tax exempt, except for those locations where surveys had not been extended.[61]

Alien Ownership Restricted

Coinciding with the movement for the forfeiture of the land grants was the swiftly rising demand for action to prevent the remaining public lands from falling into the hands of aliens and, if possible, to force the breakup of large holdings already established by them. This anti-alien movement had its origin in dislike of the English and Scotch capitalists who were pouring millions of dollars into the cattle ranching business in the 1880's and were acquiring millions of acres of land, and in outright hatred of William Scully who had purchased close to 200,000 acres of land in Illinois, Kansas, Nebraska, and Missouri and was applying the practices of an Irish landlord in his relations with his hundreds of tenants. Efforts to tax his rent roll came to nothing. The next step was to make alien ownership illegal. The newspapers, agrarian-oriented or otherwise, gave widespread publicity to the anti-alien movement. It reached a climax in 1887 to 1895 when each of the states in which Scully's land was located adopted measures prohibiting alien landownership. In two acts Illinois prohibited further acquisition by aliens and tried to prevent alien landlords from requiring tenants to pay the taxes assessed upon the land they rented. Nebraska, Kansas, and other states also took action and in 1887 Congress adopted an act "to restrict the ownership of real estate in the Territories to American citizens."[62]

"The Great Objective . . ."

Land reformers and conservationists were now sufficiently in the saddle to put through a series of measures that drastically changed the public land system. In May and July 1888, two measures were adopted by which land sales in the five southern states were

[61] 24 Stat. 143; Gates, *Fifty Million Acres,* pp. 265 ff.; Leslie E. Decker, *Railroads, Lands and Politics. The Taxation of the Railroad Land Grants, 1864–1897* (Providence, 1964), *passim.*

[62] Gates, *Frontier Landlords and Pioneer Tenants* (Ithaca, N.Y., 1945), pp. 34 ff. The anti-alien movement was stimulated by the practice of foreign-owned cattle companies which enclosed with land to which they had patents a larger acreage of public land. For English and Scotch investments in the western cattle business see Maurice Fring, W. Turrentine Jackson and Agnes Wright Spring, *When Grass was King* (Boulder, Colo., 1956), and W. Turrentine Jackson, *The Enterprising Scot* (Edinburgh, 1968).

temporarily suspended—the only way land could subsequently be acquired there was through homesteading, as had been the case between 1866 and 1876. These acts were followed on March 2, 1889, by one ending all cash or private sales of land, except in Missouri where the remaining lands were scattered fragments. Thus the right of unlimited purchase, which dated from 1820, was terminated. Finally, the General Revision Act of March 3, 1891, repealed the Timber Culture and Preemption Acts while preserving equities already established, required more specific information showing improvements and their value on desert land entries, denied the right of homestead to persons owning more than 160 acres, extended the commutation period to 14 months, ordered no further public auctions of lands except for military reservations and scattered tracts, and authorized the President to set aside public lands for forest reservations. Never before had Congress pruned out so many obsolete and incongruous provisions of past laws that had become subject to enormous abuses and provided additional safeguards to prevent laws still on the statute books from being misused.[63] After most of the arable, grazing, and forest resources of significant value had gone into private hands, frequently in large tracts, it was now possible for the Commissioner of the General Land Office to say, "The great object of the Government is to dispose of the public lands to actual settlers only—to bona fide tillers of the soil . . ." [64]

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[63] 25 Stat. 622, 626, 854–55; 26 Stat. 391, 1095–1103.

[64] *GLO Annual Report, 1890,* p. 3.

CHAPTER XVII

Use and Abuse of Settlement Laws 1880-1904

If one may judge from the silence of the public press, the periodicals, and indeed of Congressmen, little impact was made on public opinion by the Report of the Public Land Commission and the continued recommendations of the Land Commissioners for changes in the land laws to end fraudulent entries. The West was enjoying its greatest land boom—financed largely by a huge outpouring of funds from the East—and until the late eighties there were few who favored any action that might slow down the boom and the transfer of public lands to private ownership. In fact, the pressure for speeding up the surveys, opening new lands to settlement, and removing the Indians from their more desirable tracts was mounting, and, with respect to the Indians, came to a head in the eighties. Among the tribes which at that time were induced either to accept allotments or reduced reservations and to convey their surplus lands to the United States, were the Miami, Kickapoo, Sac, Fox, and Iowa of Kansas, the Omaha, Otoe and Winnebago of Nebraska, the Chippewa of Minnesota, the Creek, Seminole, Peoria and Miami of Indian Territory, the Crow, Flathead, Gros Ventre, and Blackfeet of Montana Territory, the Sioux of Dakota Territory, the Shoshone and Bannack of Idaho Territory, the Ute of Utah and the Umatilla of Oregon.[1] The wide distribution of these tribes shows the extensive pressure that was being exerted for removal of the Indians and the opening of their better lands to settlement.

Congress had long experimented with individual allotments of land as part of its efforts to break up Indian tribal organization and move the land into white ownership. In 1830, 1832, and 1834 it provided for allotments in Alabama and Mississippi for Choctaws, Creeks, and Chickasaws. These allotments, with few exceptions, swiftly fell into white hands. Meantime, Congress was including provisions for allotments to chiefs in treaties made with the Miami and Potawatomi tribes in Indiana in order to gain the support of influential traders into whose hands the allotments were certain to fall. It was impossible to wrest land cessions from the Indians without the approval of the Wabash traders to whom the chiefs were heavily in debt. The third major use of allotments in this early period was in Kansas where in 1853-60 officials of the Indian administration were attempting to induce the intruded Indians to move to the Indian Territory and either to surrender their Kansas lands or to accept allotments of 160 to 640 acres. Almost without exception the allotments proved of no advantage to the Indian beneficiaries who soon lost them and were compelled to move to other and less desirable

[1] Charles J. Kappler, *Indian Affairs, Laws and Treaties* (2 vols., Washington, 1904), I, 177-349.

reservations; the traders, local business interests, and politicians came into possession of the tracts which, it had been hoped, might aid the natives in becoming assimilated into a new life.

Dawes General Allotment Act

Despite the abundant evidence that distributing lands in severalty to Indians had failed of its objective of developing self-reliance, reformers and land hungry westerners combined to bring about the Dawes General Allotment Act of 1887.[2] Its purpose was to break up the reserves by allotting land to individual Indians who might be expected to sell their tracts as soon as they had an alienable title and to provide for the sale of the surplus lands which were still extensive though much reduced. Land "advantageous for agricultural and grazing purposes" was to be allotted in 160-acre tracts to Indian heads of families, in 80-acre tracts to single persons over 18 and to orphan children under 18. Other children under 18 were to receive 40 acres. The allotments were to be held in trust for the Indians for 25 years. Surplus land not needed for allotments could be sold only with the consent of the tribes (the West had ways of convincing Indians that their surplus lands should be sold) and if adaptable to agriculture with or without irrigation was to be held solely for actual settlers in 160-acre tracts. Title was to pass only after 5 years of occupancy and no commutation or preemption was to be permitted.[3] Because of strong opposition from the Five Civilized Tribes in present Oklahoma, they and other smaller tribes in that territory were exempted from the provisions of the Dawes Act.[4]

The rapid settlement of Texas and Kansas on both sides of the Indian Territory caused many individuals, railroads, and other economic interests to wish the surplus Indian lands opened to settlement. In 1889 heavy pressure from these sources caused the government to persuade the Creeks and Seminoles to surrender a portion of their unused lands in the central part of the territory. In line with the provisions of the Dawes Act, Congress stipulated that the lands were to be open only to homesteaders, 5 years' residence was required, and there was to be no commutation.[5] There followed the classic "run." Fifty thousand people, it was estimated, dashed across the starting line in almost savage competition to seize choice locations.

Continued pressure upon other Oklahoma Indians brought them to accept allotments also and to sell their surplus lands to the United States. A series of "runs" took place in 1891, 1892, 1893, 1895 and 1901 when tens of thousands of landseekers rushed into the ceded territory as it was opened. On the last of these occasions, the authorities decided to employ a lottery to choose who should have the privilege of selecting quarter-section tracts in place of the exciting but troublesome run. Although there were only 13,000 tracts avail-

[2] In 1875 Congress enacted that Indians should have the privilege of the Homestead Act but required that the land patented to them after 5 years of residence should be inalienable for an additional 5 years. 18 Stat., Part 3, p. 420.

[3] For a general account of the allotment process see J. P. Kinney, *A Continent Lost—A Civilization Won. Indian Land Tenure in America* (Baltimore, 1937), *passim*. For the story of allotments in Mississippi, Alabama, Indiana and Kansas see Mary E. Young, *Redskins Ruffleshirts and Rednecks. Indian Allotments in Alabama and Mississippi, 1830-1860* (Norman, Okla., 1961); Paul W. Gates, Introduction, *The John Tipton Papers* (3 vols., *Indianapolis*, 1942), pp. 3-53; and *id., Fifty Million Acres. Conflicts over Kansas Land Policy, 1854-1890* (Ithaca, N. Y., 1954). Loring B. Priest, *Uncle Sam's Stepchildren. The Reformation of United States' Indian Policy, 1865-1887* (New Brunswick, 1942) is the best general treatment of severalty before 1887.

[4] Act of Feb. 8, 1887, 24 Stat. 388.

[5] Kappler, *Indian Affairs, Laws and Treaties*, I, 322-24. Edwin C. McReynolds, *Oklahoma. A History of the Sooner State* (Norman, Okla., 1954), p. 289, says that commutation was permitted after 14 months.

able, 170,000 people registered for the lottery. Doubtless there was a great deal of duplication and registration in the names of children. By 1900, Oklahoma and Indian Territories had populations of 790,301 and 107,658, respectively.[6]

Farther north, in southern Dakota Territory, the Great Sioux Reservation blocked western development. In 1889, a 9 million-acre chunk of this reservation west of the 100th meridian was sold to the United States for $2.50 an acre after provision had been made for allotments under the terms of the Dawes Act. The surplus lands of the Sioux were opened to settlers under the Homestead Act but payment of $1.25 an acre was exacted for entries made during the first 3 years, 75 cents an acre for lands taken up in the next 2 years, and 50 cents an acre after the expiration of 5 years. After 10 years the United States was to allow the Sioux 50 cents an acre for all the remaining unentered land which was to be subject to entry as free land under the homestead laws. Commutation was not to apply to the lands.[7] Continuation of the land boom that had brought hundreds of thousands of landseekers to Kansas, Nebraska, and Dakota Territory was counted on to fill up the Sioux lands quickly. Unfortunately, in 1888 and 1889 the favorable cycle of wet years ended, and Dakota farmers suffered. To promote emigration to the Sioux lands, John D. Rivers prepared a 44-page brochure extolling the virtues of the country having "the most fertile soil, in the most favored clime under the shining sun ...." Readers were assured that "the soil is very fertile, containing all the elements necessary to raise the grains and grasses, and is a dark chocolate-colored loam, such as makes the old Illinois corn-raiser happy and prosperous. Without doubt the best soil in the South Dakota, and as productive as any in the world, is found in this valley." In the summer months "showers are more frequent in this area than in any other portion of the state. Water, coal and fuel are everywhere near by ...." The "united Dakotas can yet supply the world with wheat. No soil under the sun can so successfully produce this cereal." The character of the people of Dakota is assured for "it is generally the rule that only the most progressive, industrious, intelligent, and aggressive classes of people move to an inviting frontier, and have the nerve and ambition to withstand the temporary hardships of early settlers." In a final rhetorical burst the author called the Sioux lands "the Genesee Valley of the Northwest, the Garden Spot of the Western Slope ...."[8]

Rivers' over-generous judgment of the Sioux country produced no stampede of people looking for homestead land at $1.25 an acre. The first year there were only 243 entries for 37,014 acres. In the same year, however, 331 allotments were made on 102,639 acres.[9]

An examination of Charles J. Kappler's *Indian Affairs, Laws and Treaties* and of the reports of the Commissioner of Indian Affairs for the years following the adoption of the Dawes Act reveals how rapidly the reservations were being reduced by allotments and the sale of surplus lands, both processes making possible the acquisition by whites of the better portion of the arable lands. At a later time, Americans were to regret the haste with which the arable land was transferred from tribal ownership and the demoralization of the Indian which followed the allotment policy, but they were unable to devise any other solution

[6] McReynolds, *Oklahoma,* pp. 299-304; *Twelfth Census, Agriculture* (Washington, 1902), Part 1, p. 688.

[7] Kappler, I, 336-39.

[8] John D. Rivers, *The Settlers' Guide to the Great Sioux Reservation* (Chicago, 1890).

[9] *Land Office Report, 1891,* pp. 285-87; Herbert S. Schell, *History of South Dakota* (Lincoln, Nebr., 1961), pp. 247-48.

of the problem of the Indian living in a white man's world.

Farm Making and Stockmen

Farm making in the West reached its peak in the 20 years between 1880 and 1900 when 497,230 new farms were created in the public domain states west of the first tier beyond the Mississippi, but including Minnesota. In that same period 176,901 new farms were created in Texas. A total of 5,396,000 immigrants came to the United States in the eighties and though there were not quite so many in the nineties the number of immigrants still exceeded that of any decade before the eighties.

Farms were being created well beyond the 98th and the 100th meridian, though their size indicates that they were combinations of homesteads, preemptions, timber culture claims, desert land entries, and purchases from railroads and of school sections. Settlers were moving in growing numbers into the area where the cattle industry flourished, and where Major Powell thought the land should be made available to stockmen in units of 2,560 acres. Although grain farming was hazardous in western Kansas and western portions of Nebraska and Dakota Territory, landseekers and real estate interests, such as railroads and town promoters, could not agree with Powell and population continued to press into this range country. Settlers found that a couple of wet years when wheat crops were very good would be followed by an equal or greater number of dry years in which crops were partial or complete failures. Population would enter this area of meager rainfall in good years; in dry years farms were abandoned and there was a reverse movement of population back to areas of more rainfall. Over the course of two generations the settlers adapted their crops by introducing drought-resistant strains of wheat and sorghum and their methods of tillage to the region. Grain farming has survived, along with cattle raising.

Cattlemen had preceded settlers into central and western Kansas, Nebraska, and Dakota Territory, grazing their livestock over large areas of public lands which were wide open to them without cost. But as disputes arose over water rights, the foresighted stockmen saw the necessity of controlling access to water. At this point they resorted to the homestead or preemption laws, had their hands apply for land along streams, commute their homesteads to preemptions, take title and transfer the quarter-sections to their employer. Possession of a few hundred acres might thus give the stockman control of many thousand acres of grass land. Then in the years of fair rainfall came the settlers, breaking up the range, insisting on the adoption of herd laws, and trying to ban further introduction of Texas steers that brought the destructive Texas fever to local cattle. Barbed wire had been perfected by this time and the stockmen bought it by the carload and fenced in millions of acres to keep out both homesteaders and other stockmen. This brought about such an uproar against the fences that the Senate called for an investigation in 1884.[10]

Special agents were sent into the high plains country to investigate accounts coming to the land office of fraudulent entries. From the reports of these agents and complaints of many settlers, Henry M. Teller,

[10] Few topics have so fascinated historians and the public as the early days of the cattle industry on the Great Plains. Four generally good studies which have dealt with the public land question in some degree are: Ernest S. Osgood, *The Day of the Cattleman* (Minneapolis, 1929); Everett E. Dale, *The Range Cattle Industry. Ranching on the Great Plains from 1865 to 1925* (Norman, Okla., 1930); Louis Pelzer, *The Cattlemen's Frontier. A Record of the Trans-Mississippi Cattle Industry from Oxen Trains to Pooling Companies, 1850-1890* (Glendale, Calif., 1936); Ora B. Peake, *The Colorado Range Cattle Industry* (Glendale, 1937).

Secretary of the Interior, compiled a devastating indictment of the attempts of cattle companies and stockmen to control the range and bar settlers. One of the frequently reiterated charges was that stockmen had monopolized approaches to water by using dummy entrymen to acquire land for them through preemption and homestead entries. These entries were often so located as to give color to the cattlemen's claims that they had enclosed only their own land. Hundreds and thousands of acres of public land were illegally fenced and threats of violence made against anyone who cut the fences. A mail carrier told how he either had to go miles out of his way to deliver mail or halt where public land was fenced, get out of his buggy to let the bars down, drive through and then get out and put up the bars and risk his skittish horses running away. Settlers and small stockmen were threatened with expensive lawsuits and even with death if the fences were cut.

Efforts of the Land Office to declare the fences illegal produced no results for it appears that the larger cattle companies, some with a capitalization of more than a million dollars, were able to control the courts and the law officers. Two companies, one owned by Scottish capitalists, were said to have enclosed over a million acres each; 18 other companies, partnerships or individuals were named who had enclosed from 16,000 to 200,000 acres each in Colorado, Kansas, or Nebraska. Whole counties in Kansas were reported to be fenced; in Wyoming 125 large cattle companies were charged with fencing public lands. Elsewhere, in Montana, New Mexico, and Utah fencing in of public lands was common. The Acting Commissioner of the Land Office summarized his evidence by saying that "the practice of illegally inclosing the public lands is extensive throughout the grazing regions ... many millions of acres are thus inclosed and are now being so inclosed to the exclusion of the stock of all others than the fence owners, and to the prevention of settlements and the obstruction of public travel and intercourse."[11]

Although the cattlemen and their political friends seemed to triumph over the settlers, ultimate victory was bound to come to the latter as their numbers grew. The Senate resolution of February 14, 1884, was an indication of the way the wind was blowing and the facts divulged by the resulting report gave further impetus to the cause of the settlers. In 1884 and 1885 the House and Senate took up the fencing question and adopted a fairly stringent measure giving to the Interior and Justice Departments adequate authority to prosecute persons illegally fencing public lands.

The facts that fencing of public lands could have existed for several years and that numerous clashes of a serious, indeed a fatal, character should have developed between cattlemen and settlers before action was taken was attributed by N. C. McFarland, Commissioner of the Land Office, to the complexity of the land laws. As he pointed out, there was no law under which parties could be prosecuted criminally, and to maintain a civil suit necessitated long and painstaking investigations. First it was necessary to determine precisely what public lands were enclosed. After the testimony had been carefully studied by the Land Office it had to go to the Attorney General who would give equally careful study to the legislation, court decisions and precedents, and then send the record to the district attorney for prosecution. All this would take months, if not years, and meantime warfare on the range was continuing and the right of settlers to proceed upon the enclosed lands was denied.[12]

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[11] *S. Ex. Doc.*, 48th Cong., 1st sess., Vol. 6, No. 127 (Serial No. 2167), p. 2.

[12] *Cong. Record*, 48th Cong., 1st sess., pp. 4768-83, esp. 4772; Act of Feb. 25, 1886, 23 Stat. 321.

In 1885 when William A. J. Sparks became Commissioner of the Land Office, Lucius Lamar, Secretary of the Interior, and Grover Cleveland, President, the settlers began to get relief. Authorized by the Act of February 25, the President issued his famous order requiring "that any and every unlawful inclosure of the public lands ... be immediately removed" and forbidding any person or corporation "from preventing or obstructing by means of such inclosures, or by force, threats, or intimidation, any person entitled thereto from peaceably entering upon and establishing a settlement or residence on any part of such public land ...."[13] Fourteen months later Sparks reported that 375 unlawful enclosures of public lands containing 6,410,000 acres had been brought to the attention of the officers, proceedings to compel removal of fences had been recommended in 83 cases, involving 2,250,000 acres, and final decrees ordering removals had been obtained in 13 cases involving 1 million acres. In 47 cases involving 350,000 acres fences were removed without resort to the courts.[14] A believer in pitiless publicity, Sparks listed in his report of that year every individual, partnership, and company against whom proceedings had been recommended by his office or by other parties, the decrees, if any, and the acreage from which the fences had been removed, and the penalties exacted. Most prominent cattlemen were involved in one way or another but many had their indictments quashed. Sparks entertained no great assurance that once the fences were down the small man, whether settler or stockman, would be any better off for he reported that intensive efforts to control access to streams through land ownership enabled the larger stockmen to dominate about the same area they previously had fenced.[15] Thereafter, intermittent efforts were made to have the illegal fences removed but without much success. Fifteen years after Sparks left office Theodore Roosevelt had to start all over again to remove the fences which either had not been removed or had been put up again.

Problems of Land Commissioners

In the eighties the General Land Office was also receiving serious complaints about the abuse of the preemption law and the commutation clause of the homestead law, which permitted individuals to commute their homesteads to preemption and pay for them at $1.25 an acre after 6 months of presumed residence. Evidence of the misuse of these measures was piling up in complaints from settlers and land officers in the field and brought the Land Office officials to believe that only by repeal of the Preemption Act and extension of the period before a homesteader could commute his entry to a cash entry could the public lands be saved for actual settlers. There might have been another solution had the patronage system not been so firmly established for the staff and field employees of the General Land Office and had Congress been willing to grant to the Office the number of inspectors and other agents necessary to give rigid scrutiny to all entries. But Congress and the public generally seemed to prefer low-salaried, incompetent public servants, at least in the field, and allowed the Land Office a staff altogether inadequate to handle the enormous burden it faced.

As early as 1871 the Commissioner of the General Land Office—ignoring the increasing inflexibility in the land system which resulted from the reluctance to offer newly surveyed lands in the area beyond the 97th meridian at cash sale—urged that preemption, having been displaced by

[13] Proclamation of Aug. 7, 1885, Richardson, *Messages and Papers of the Presidents,* VIII, 308-309.

[14] *Land Office Report, 1886,* p. 97.

[15] *Report, 1886,* pp. 97-98, 455-72.

homestead as the favored means of gaining ownership of land, was no longer necessary and should be consolidated with it. Two years later Land Commissioner Willis Drummond declared that "The many frauds which occur under the preemption laws, almost universally in the interest of speculators, offered solid ground for repeal."[16] Thereafter the Commissioners continued to urge upon Congress the repeal of all preemption laws, holding that homestead offered actual settlers all that preemption did and at slight cost for fees if they remained on the land 5 years, that preemption cases were piling up and threatening to overwhelm the work of the Land Office, and that mining, timber, cattle, and speculative groups were using the measure to build up large holdings.

Drummond's successor, Williamson, took a slightly different tack in 1877, recommending that neither preemption nor homestead should apply to timbered or other nonagricultural lands, but he failed to recommend how classification was to be achieved.[17] McFarland in 1882 reported that the correspondence coming from the registers and receivers and special agents sent into the West to supplement their investigations of entries "indicate that a material proportion of the preemption entries now made are fraudulent in character, being chiefly placed upon valuable timber or mineral land, or water rights, and made in the interest and by the procurement of others, and not for the purpose of residence and improvement by the professed pre-emptor."[18] The Commissioner maintained that both homestead and preemption were settler measures and to keep both was to maintain a double system necessitating the employment of two sets of machinery to receive entries, two agencies of adjudgment, and duplicate sets of records, thus piling up obligations for an over-extended office staff, adding to the burden of the local officers, and making it difficult for all but the most skilled to keep intimately in touch with all the instructions of the Commissioners, their numerous modifications, the decisions of the Secretary of the Interior and of the Attorney General and of the various courts concerning the two laws.[19]

McFarland, perhaps unfortunately, followed the practice of his predecessor, Williamson, in urging first better pay for the chief officers of his bureau and more clerks. But aside from this he strove with considerable eloquence to convince Congress of the need for a drastic overhaul of land legislation. The Timber Culture Act was pictured by him as providing a holding device by which people could control a quarter-section for as much as 8 years without actually setting out and tending the trees, and 13 years without full compliance with the law. During this time the pressure on the land supply was giving it value and making possible the sale of relinquishments at profitable returns. The large increase in entries and the many accounts of abuse of the law convinced McFarland that it should be repealed. He also advocated repeal of a section of the Act of May 14, 1880, that allowed any person to file an entry on a tract which had been relinquished without waiting for the formal cancellation of the entry, as the law had earlier required. It will be remembered that complaints had been brought to the Public Land Commission against this requirement of formal cancellation in Washington and the Act of 1880 had attempted to provide the desired relief. But, as McFarland pointed out, the effect of the new provision was "to invite speculative entries for the purpose of selling relinquishments." He went on: "when a new township is surveyed large portions of the land are at once covered with filings

[16] *Report, 1871,* pp. 27-31; *Report, 1873,* pp. 8-10.
[17] *Report, 1877,* p. 35.
[18] *Report, 1882,* p. 8.
[19] *Report, 1883,* pp. 5-6.

and entries, and relinquishments of which are then offered for sale like stocks in the market. To such an extent is this proceeding carried that it is becoming difficult for an actual settler to obtain access to a quarter section of public land in desirable agricultural localities without first buying off a pretended claim that has no foundation other than the facility added by this statute for making and relinquishing it."[20]

In 1884 McFarland repeated his recommendation for the repeal of the preemption laws, the Timber Culture Act, the section of the Act of 1880 relating to relinquishments, the Desert Land Act, and the Timber and Stone Act which were also being abused.[21] He urged that the period in which homesteads could be commuted to cash entries be increased from 6 months to 2 years. Though the timber and stone entries were relatively few compared with the number of commuted homesteads and preemption entries, they were being made on the most valuable timberland in the possession of the United States which McFarland thought should be sold at its fair value. So many and so flagrant were the charges coming before him concerning abuse of the law by "home and foreign companies" on the Pacific Coast that he ordered all entries suspended to allow time for more careful investigation. He found the preventive measures available to him "wholly inadequate" and could see no way of protecting the government against loss because the requirements of the law" are slight and easily evaded, and evidence of fraudulent proceedings rest so much within the knowledge of interested parties that specific testimony can rarely be obtained. Thus, while results are observable, easily demonstrated, and of common notoriety, the processes by which they are reached are difficult to trace in a legal proceeding." Repeal, he thought, was the only way to stop the abuse. He also took up the question of the fences on the public lands again and urged the adoption of legislation which would make it possible to bring speedier action against those responsible for the illegal fences than the cumbersome court procedure through which the office had to work.[22]

It should be clear that it was not William A. J. Sparks, Cleveland's Land Commissioner, who first tried to bring all these issues to public attention. McFarland in every report made forceful and well-argued recommendations. True, like his predecessors, he disregarded the need for the flexibility which preemption and timber culture entries provided in the arid lands, and when he spoke about consolidating preemption and homestead he did not make clear whether he was advocating only a 160-acre homestead or whether he would support a larger unit of land entry. McFarland also pressed forward the work of the timber agents in ferreting out illegal plundering of timber on the public lands, a topic which will be discussed later. But what was most wanted was to establish respect for the law not to catch, fine, and jail every plunderer.[23]

To investigate fraudulent entries McFarland had 36 special agents in the field. Their work resulted in the cancellation in 1884 of 680 entries, mostly homestead, preemption, timberland cash, and timber cul-

[20] *Ibid.*, p. 28. The practice of establishing claims beyond the single quarter-section for resale had been common since the first settlements in Ohio. The Act of May 14, 1880, provided that when relinquishments were filed on homesteads, preemption or timber culture claims in local land offices the tracts thus freed of claims were immediately subject to entry. 21 Stat. 140.

[21] The Timber and Stone Act of June 3, 1878, was ostensibly to enable settlers to acquire ownership of a nearby quarter-section of timber land for their own use but its framers knew from the outset that it would be primarily used by dealers in timber lands. It is discussed in Chap. XIX, "Early Efforts to Protect Public Timberlands."

[22] *Land Office Report, 1884*, pp. 6-8, 17.

[23] *Ibid.*, pp. 144-45.

ture entries. In addition 782 entries were "held for cancellation," hearings were ordered on 781 entries, legal proceedings were recommended on 22, and 5,000 were suspended, waiting investigation by the agents.[24]

In his final report before he was displaced by Sparks, McFarland warned that with the rapid alienation of the public lands "the time is near at hand when there will be no public land to invite settlements or afford citizens of the country an opportunity to secure cheap homes." He deplored the vast stretches of land which had been acquired by evasion of the law and without compliance with the requirements of settlement and cultivation. Wasteful dissipation of the lands should cease and that could only be assured by rewriting the land laws to prevent fraud and evasion. Timberlands should be appraised, the most valuable set aside as forest reserves and the balance offered, as wanted, at their appraised value. He recommended specifically the establishment of a forest preserve on the headwaters of the Missouri and Columbia Rivers in Montana Territory.[25]

If Cleveland wanted to find a thoroughgoing reformer who would be interested in rooting out corruption, able to withstand the pressure of special interests, and in sympathy with the agrarians who were anxious to halt the rapid alienation of the public domain to large interests, he could not have done better than to choose Sparks to head the Land Office. But Cleveland and the leadership of the Democratic party were Bourbon conservatives, as Horace S. Merrill has ably pointed out. Consequently the nomination of Sparks as Commissioner of the Land Office is not easy to understand. It is clear that Cleveland and Secretary of the Interior Lucius Q. C. Lamar wanted honest administration, insofar as it could be obtained through the swarm of Democrats who, after the elections, displaced Republicans as surveyors general, registers and receivers and as long as it did not jeopardize the popular following of the Party in the West. But Sparks was no Bourbon, though he was a strongly partisan Democrat. His difficulty was that, unlike McFarland, he tried to cut through the web of deceit, mismanagement, and special influence that had made possible the outrageous frauds his special agents were uncovering; in so doing he struck hard at influential interests who clamored for his removal.[26]

Sparks had been in office only a short time before he had established himself as the most energetically reformist and apolitical Commissioner of the Land Office. He lashed out right and left at corrupt elements taking advantage of the loopholes in land legislation, of which there were many. He accused his predecessors of conducting the Office "to the advantage of speculation and monopoly, private and corporate, rather than the public interest . . . ." Thousands of claims involving millions of acres of land had been annually passed to patent, he asserted, "upon the single proposition that nobody but the government had any *adverse* interest." The special deposit system (by which it was possible to select an obviously valuable tract of land in a wholly

[24] *Ibid.*, pp. 146-47. Agnes Larson has summarized the reports of two of these special agents in Minnesota in her *History of the White Pine Industry in Minnesota* (Minneapolis, 1949), pp. 290-95, 390-96. In addition to the agents investigating entries under the settlement laws there were 44 agents protecting the public timber who reported in 1884, 627 cases of trespass of which 352 were recommended for prosecution.

[25] *Land Office Report*, 1884, pp. 17-19.

[26] In his efforts to show the Bourbon character of the Democratic leadership Horace S. Merrill, *William Freeman Vilas, Doctrinaire Democrat* (Madison, Wis., 1954), did not find it necessary to mention Sparks. By 1887 there had been almost a clean sweep of Republican surveyors general, registers and receivers. See the *Official Register of the United States, 1883*, and *1887*.

unsurveyed area, pay for a special survey, file an entry on the land and later have the deposit returned in the form of scrip that was subject to entry on unoffered land) he found was subject to gross abuse, as McFarland had earlier brought out. Corrupt elements took advantage of it to make "erroneous, fraudulent and incomplete surveys . . ." Spanish and Mexican land claims which had long since needed more careful administrative and judicial scrutiny—especially several of the more dubious claims—under Sparks were given a critical examination. In the past, Congress had tended to disregard settlers' interests in favor of influential persons. Grants of a few leagues had been blown up by smart lawyers into holdings vastly larger and, with weak defense by the government, had been patented. Surveys which in no way conformed to the provisions of the original grant and which allowed the inclusion of more of the choice land than was intended had been accepted by the Land Office and the courts, almost without protest. Mineral rights had been approved along with surface rights, contrary to the provisions of Spanish land law, which reserved them to the Crown.

Railroad land grants which his predecessors had shown no inclination to look upon critically, particularly aroused Sparks' ire. He felt the Office had been altogether too sympathetic to the railroads in many cases where settler interests were involved and that it ought to have demanded that the grantees either build their lines within the time allowed or give up their great donations. That some of the policies he criticized had been commenced by his own party when last it was in control of the government may not have occurred to him. The practice of withdrawing all public land along a vaguely determined route within a strip of territory from 20 to 80 miles wide and reserving all the lands within that area for decades without any sign that the railroad would finally be constructed, in his opinion, constituted a premature and unauthorized action that "arbitrarily and cruelly" deprived settlers of their rights. A number of railroads had received lands to which they were not entitled under a strict interpretation of the law, and extraordinary liberality had been shown in determining the mileage for which they were entitled to receive land. In numerous cases involving conflict of settlers' and railroads' rights, and even involving government rights, the Land Office had favored the railroad. Sparks even charged his predecessor with working his staff around the clock in its last days to fill out patents to a southern railroad which had not earned the land.

Under the caption "Fraudulent Land Entries" Sparks included in his report extracts from registers, receivers, and special agents which throw much light on the mad scramble for lands. Perhaps the most informative statement related to the breakdown of respect for public law:[27]

> The idea prevails to an almost universal extent that, because the government in its generosity has provided for the donation of the public domain to its citizens, a strict compliance with the conditions imposed is not essential. Men who would scorn to commit a dishonest act toward an individual, though he were a total stranger, eagerly listen to every scheme for evading the letter and spirit of the settlement laws, and in a majority of instances I believe avail themselves of them.
>
> Our land officers partake of this feeling in many instances, and if they do not corruptly connive at fraudulent entries, modify their instructions and exceed their discretionary powers in examinations of final proof.

The marshaling of hired hands to make entries which, when patented, were conveyed to the employer was becoming a widely used method of acquiring more land than the settlement laws allowed to an individual. Less than one-tenth of the land in the Duluth district in Minnesota

[27] *Land Office Report, 1885,* p. 50.

had remained in the hands of the original entrymen, who had sold their timbered tracts to lumbermen. Without the timber, said an agent in northern Minnesota, the land was not worth more than 10 cents an acre. In Kansas and Dakota Territory many people were filing applications and commuting their entries or making preemption entries to gain a tract they could mortgage for $500 or $1,000. They then threw up the land, leaving it to the mortgage company to take over and try to recover its investment. Estimates of the proportion of fraudulent entries ranged from 50 to 95 percent.

Sparks could do little more than his predecessors had done in recommending the repeal of the Preemption, Timber Culture, Desert Land, and Timber and Stone Acts. He seemed to believe that the commutation provision of the Homestead Act could not be policed and recommended its abolition.[28] Sparks concluded his first report by urging that the public forests on the Mississippi watershed should be preserved and that all such lands should be immediately withdrawn from sale or entry.[29]

Despairing of early action by Congress to reduce the amount of fraud in the disposal of the public lands, Sparks, on April 3, 1885, after only a month in office, ordered the suspension of all original entries of public lands, except cash and scrip entries in central and western Kansas and Nebraska, northern Minnesota, most of Colorado, and all of Dakota, Idaho, Utah, Washington, New Mexico, Montana, Wyoming, and Nevada. Also, all final entries under the Timber and Stone Act and the Desert Land Act were suspended.[30] He justified this sweeping order on the basis of reports of special agents, local land officers, inspectors, district attorneys, and letters from public and private citizens "all detailing one common story of widespread, persistent, public land robbery . . . ." Sparks took another step which did nothing to win support of a powerful group of land agents and lawyers who practised before his bureau by ending the procedure of allowing them to have claims for patents on the suspended list expedited as "special." Too frequently it had been found that such claims were dubious if not outright frauds. To top all this, Sparks issued an order prohibiting attorneys and claim agents from visiting with clerks and other employees of the Land Office during business hours.[31]

Sparks also tackled illegal fencing on the public lands. The cattle industry on the Plains was now to a very considerable degree in the hands of English, Scottish, and American companies with great aggregations of capital at their disposal. After obtaining ownership of a ranch of a few hundred acres they had fenced in many times as much land belonging to the government and barred homesteaders from crossing or intruding into their dominion. The New Brighton Cattle Company of Nebraska, for example, was said to have enclosed 84,000 acres of public land and had posted signs along its fence warning "that any person . . . who dares to break down this fence had better look out for his scalp."[32] Commissioner McFarland had earlier issued a circular which stated that the Department would "interpose no objections to the destruction" of unlawful fences by settlers desiring to take up land within them, and threatened to take action against

[28] *Ibid.*, pp. 48-74.

[29] *Ibid.*, p. 84.

[30] For the order of suspension see *Land Office Report, 1886,* p. 43.

[31] *New York Times,* Jan. 11, 1886.

[32] *Cong. Record,* 48th Cong., 1st sess., p. 4771. In the report of the surveyor general for Nebraska, from which this quotation was borrowed, the warning appears as "The son of a bitch who opens the fence had better look out for his scalp." *H. Doc.,* 48th Cong., 1st sess., Vol. 26, No. 119 (Serial No. 2206), Part 2, p. 2; *House Reports,* 48th Cong., 1st sess., Vol. 5, No. 1325 (Serial No. 2257), pp. 2-6.

persons "unlawfully inclosing tracts of public lands . . . ." He had conceded, however, that the only action he could take was to issue the warning and to refer cases to the Department of Justice for prosecution. His assistant had conceded that "little or no respect had been paid" to the warning and the Department of Justice was not inclined to press matters vigorously. Both McFarland and Teller had recommended to Congress that it take action to authorize the people to break down and cut fences and compel the owners to remove them, but felt they lacked authority to do more.

Commissioner Sparks' Battle

At this time the enormous land holdings English and foreign capitalists had acquired in the United States, partly through misuse of the land laws by their agents or by the persons from whom they purchased their holdings, began to attract attention.[33] The opposition to alien land ownership added strength to the movement for an act to outlaw illegal enclosures of the public lands. Under the leadership of Lewis Payson of Illinois and William S. Holman of Indiana, who were always in the center of land reform activities, Congress was persuaded to adopt a measure authorizing the Federal district attorneys, on the presentation of evidence of unauthorized occupation and fencing, to bring action in the Federal district and circuit courts to compel the removal of the fences, and authorizing the President to employ both civil and military forces to compel removal and destruction of such unlawful enclosures. Any person obstructing the entrance of settlers upon public lands or attempting to deter them by threats was liable to fine and imprisonment.[34]

In the easygoing days of President Arthur's administration unlawful fencing had multiplied widely in all the range states, but Sparks, armed with the new authority, struck right and left in his efforts to compel removals and to open the millions of enclosed acres to settlers. District attorneys were instructed to secure indictments against those responsible, orders were issued that the fences must come down and in 1887 Sparks persuaded the War Department to sanction the use of a company of cavalry to aid in destroying the fences in Wyoming.[35]

Bold action of this sort was bound to bring down upon Sparks, Lamar, and Cleveland the wrath of the railroads whose unearned grants were being restored to the public domain, of owners of private land claims whose questionable titles or surveys were threatened, and of the many attorneys and claim agents who had built up profitable practices through their ability to get access to information not open to the general public and to expedite the patenting of suspended and dubious claims. Also distressed were the numerous landlookers and attorneys in every land office town in the western states whose business was immediately contracted, cattle, timber, and mining companies who were in process of acquiring land through the use of dummy entrymen operating under the commutation clause or the preemption law, and some actual settlers who needed to gain title, even if questionably, in order to be able to borrow for farm needs. The legitimate

[33] Illinois, Kansas, Nebraska, Wisconsin, Minnesota, Colorado, Iowa, Idaho, and Missouri adopted anti-alien-landowning laws in 1885-87. The Federal Act of March 3, 1887, is in 24 Stat. 476. I have discussed the background of the agitation for these measures in *Frontier Landlords and Pioneer Tenants* (Ithaca, 1945), pp. 57-59.

[34] Act of Feb. 25, 1885, 23 Stat. 321.

[35] *New York Times,* May 28, 1887. Peake, *The Colorado Range Cattle Industry,* p. 77, lists 14 individuals and companies under investigation for illegally fencing nearly 3 million acres, the largest of which were the Arkansas Valley Land and Cattle Company, the Prairie Land and Cattle Company, the Livesy Brothers, the Cleveland Cattle Company, and John W. Prowers.

settler, not planning to relinquish or to mortgage and get out and therefore in no haste to acquire a patent, would not suffer from Sparks' suspension order and indeed might welcome it as promising that in the future less land around him would be held for speculation and more would be in the hands of actual farm makers interested in developing the economic and social facilities of the region.

Representatives of the public land states influenced, so it was charged, by their close political associations with cattle syndicates, land speculators, and loan agents were joined by politicians from older states looking for means to hurt the Cleveland administration in a campaign of calumny against Sparks and the agents who had unearthed the scandals, even though some of these agents had been first appointed in the Hayes-Garfield-Arthur period.[36] A Nebraska Congressman called the special agents, spies, "political papsuckers" who were undermining the titles of honest settlers. He was particularly harsh on Sparks against whom he was conducting a personal vendetta because Sparks had suspended many entries in which he and his brother had an interest. Although there was evidence of strong partisan feelings in the attack on Sparks, leading Republicans like Elihu Washburne, David Davis, and Lewis Payson strongly defended his action as implementing and supporting the recommendations of McFarland.[37] Political leaders of the Great Plains liked investigation agents no better than Stephen A. Douglas and John Wentworth had liked the agents who ferreted out the plundering of timber on government lands in the 1850's.

No matter how just the charges Sparks brought against the plunderers of the public lands or how necessary the action he had taken in suspending land entries if the lands were to be saved for actual settlers, he had made the error of alienating influential people who controlled the local and national newspapers. He had little support except from civil service reformers and journals like the New York *Nation* and the *New York Times*.[38] In his zeal to prevent fraud and save the public land from the "monopolist" Sparks seemed to exhibit a Napoleonic complex at times and committed more than one error which made it easier for his enemies to secure his removal. He held that persons could not, after perfecting a preemption entry, commute a homestead entry to cash, thereby reversing a practice long since permitted. He also tried to forbid the acceptance of applications under the Preemption, Timber Culture, and Desert Land Acts, thus nullifying these acts. Both orders were reversed by the Secretary of the Interior.[39]

[36] It was in this connection that an advertisement of Bishop Perkins, member of the House and President of the Equitable Trust and Investment Co. of Wichita, Kansas, announcing mortgage loans at 6 and 8 percent on some of the best lands in Kansas at one-third their value at forced sale was included in the *Cong. Record,* 49th Cong., 1st sess., June 28, 1886, p. 6250. Perkins' reply was that investment companies did not make loans to fraudulent occupants of the public lands but testimony appeared over and over again that they made loans to entrymen on the security of the land before the law sanctioned their action. *Ibid.,* p. 6289.

[37] *Cong. Record,* 49th Cong., 1st sess., pp. 5735-36 and App., p. 253. Laird's defense is not altogether convincing but the accusation seems to have done him no harm in Nebraska for he was re-elected three successive terms. Lewis Payson, Representative from Illinois, made the best defense of Sparks' suspension order in *Cong. Record,* 49th Cong., 1st sess., pp. 6237-45.

[38] *New York Times,* Dec. 5, 8, 1885, Jan. 11, 1886. The latter paper called the *Tribune,* which joined in the scurrilous attack upon Sparks, the "organ of the land thieves."

[39] *New York Times,* March 18, June 5, 1886. Lamar had approved the order suspending the acceptance of applications for preemption, timber culture, and desert land claims but reversed himself and ordered its recision when its political dangers became obvious. Sparks responded to a Senate inquiry about the order giving many instances of

(Cont. on p. 476.)

The degree to which the settlement laws were being misused was bad enough, as contemporary evidence suggests, but Sparks seemed to assume that practically all entries were being made for illegitimate purposes, neglecting the obvious fact that settlement and farm making were proceeding in the Great Plains and the states farther west at a rate only exceeded by that of the 1870's. The public lands were being transformed into farms as the authors of the Homestead Act had anticipated, though in the process the costs of the land were higher than if the laws were not misused.

Those who wished to strike at Sparks could hardly favor the reduction of appropriations for investigating agents, but his general order of suspension was vulnerable or at least it could be made to appear vulnerable. In their effort to force him out of the administration and to repeal the suspension order, as Sparks says in his report for 1886, "Circulars were issued and sent broadcast to local attorneys and land and money brokers, laying out a plan of campaign, advising them to cause letters to be written to Senators and Representatives" protesting the suspension of entries and the issue of patents, and "representing the hardships to settlers resulting from such action." Hundreds of letters of protest were sent to members of Congress and were given publicity.[40] The heat was on and Lamar and Cleveland felt it was politically wise to abandon the suspension order. The *New York Times* felt the revocation of Sparks' order by Secretary Lamar was "intentionally severe and even offensive," in effect a reprimand of Sparks for causing the administration so much unpopularity in the West, and regarded it as a "comfort for thieves." Tactless as usual, Sparks called the revocation premature, resulting from the great pressure of "sharps, speculators, sharks, land grabbers and other scoundrels who were interested in the stealing of the public domain by fraudulent land entries." He would, he declared, never certify for patent any case that was tainted by fraud.[41]

Sparks did not give up easily, notwithstanding repeated attacks on the floor of both Houses of Congress and diminishing support from his superior. His report for 1886 contains a painstaking examination of the surveying system, showing instance after instance of incompetent and fraudulently run surveys that would have to be done over again, and continued misuse of the preemption law to acquire large tracts of land. Sparks recommended the reopening of private land claims in California that had been patented 29 years earlier because of alleged fraud that only appeared after the claims were confirmed and patented, and asked for a large increase in funds to employ special agents for investigation of fraudulent entries of land. When Kansas and Nebraska Representatives attacked him for requesting additional appropriations, Sparks declared that the funds available would employ "a force so utterly inadequate as to be almost a mockery of effort."[42] Unlike his predecessors who placed first emphasis upon salary increases for the top officers of the Land Office including the Commissioner, and who also asked for large increases in the number of positions, Sparks said nothing about his own salary but urged that the chief clerks be given the same salary as persons of comparable

similar orders of withdrawal of lands from entry and showing how most such withdrawals had been made at the request of entire state delegations. But when the power of withdrawal is used "to save public lands ... from the grasp of speculation and monopoly and preserve them for actual settlement ...," it is called into question. *Land Office Report, 1886,* pp. 135-89, esp. 145. One may only admire the legal and research staff Sparks had at hand in compiling some of his state papers, though sometimes their talents were used for polemical purposes.

[40] *Land Office Report, 1886,* p. 48.

[41] *New York Times,* April 8, 10, 12, 1886.

[42] *Land Office Report, 1886,* pp. 16-107.

rank in other bureaus, and asked for funds to hire a higher grade of clerks for the complicated questions they faced.[43]

The last of Sparks' raspingly critical reports was dated September 28, 1887, 6 weeks before he resigned. Again he repeated his severe indictment of corruption that had made it necessary to do surveys over again, condemned the contract system, asserted that fraudulent private land claims and fraudulent surveys of legitimate claims were responsible for "the gross piracy of public lands," and brought forth additional evidence of the misuse of the settlement laws.

Sparks had worn out his welcome with the easygoing Lamar who disliked the continued controversies between his subordinate and Congress. In November 1887, Sparks asked Lamar to reconsider a decision he had made rejecting a recommendation that action be taken to recover a substantial tract of land from a Wisconsin railroad. Sparks' closely reasoned appeal for reconsideration contains some slightly rough spots that a tactful subordinate official would have couched in more respectful tones but Sparks was making a lawyer's argument for his position, and an ably drafted argument it was. Lamar seems to have been worn down by the reformist zeal of his subordinate, who had caused him more trouble than all the other bureau chiefs together. Rather than give more time to the technical details of the question, which if the Commissioner's view were to prevail would return many thousand acres of lands to the government at the cost of the Omaha Railroad, Lamar replied in a curt, indeed angry letter, that as the *New York Times* said was "offensive or at least annoying." Lamar felt that the Commissioner should accept the Secretary's interpretation or resign and was said to have declared that either he or Sparks must leave the Department. A strong Democratic organ, the *New York Times,* which had been favorably impressed with the efforts of Sparks to root out corruption and prevent the public lands from being fraudulently acquired, expressed dismay at Lamar's hasty action in writing such a letter and immediately giving it to the press. It added that Lamar had displayed "neither the temperament nor the clear and calm judicial faculty" that one expected of a man being considered for the Supreme Court.[44] Cleveland had to support Lamar in the controversy but at the same time he acknowledged, in accepting Sparks' resignation, the remarkable work he had done in improving the functioning of the land system.[45] Thus went out of office the prickly, self-assured moralist, perhaps the ablest Commissioner the Land Office had in the 19th century, one who had done much to focus attention upon the failure of Congress to grapple with needed reforms and on the failure of the administration to use the powers government possessed to reduce, if not to eliminate, fraud in the transfer of public lands to private ownership.

Flagrant Violations Prevail

Williamson, McFarland, and Sparks had brought out much information concerning the misuse of the settlement laws in the timbered sections of Minnesota, California, and Oregon, and in parts of Dakota Territory and Kansas and Nebraska but Congress was slow to act. Though the Commissioners pointed their fingers at lumbermen, cattlemen, and speculators who had con-

[43] *Ibid.,* p. 107.

[44] *New York Times,* Nov. 12, 13, 1887.

[45] John B. Rae, "Commissioner Sparks and the Railroad Land Grants," *Mississippi Valley Historical Review,* XXV (September 1936), 211-30. Cate, *Lucius Q. C. Lamar,* seems not to have been aware that all the major reforms and improvements in the administrative machinery of the Land Office were the result of Sparks' leadership which Lamar merely allowed to proceed as long as it did not rock the boat too seriously.

siderable capital, the fact was that many people on the frontier were ready to evade the laws to gain additional land and they came to feel little repugnance about shading the truth in so doing. Land was the route to fortune. To swear that they had fulfilled the residence requirements, especially when aided by a claims attorney who coached the entrymen in all the necessary steps, was not difficult. Furthermore, some of the regulations seemed to the frontiersman to have no justification, especially that which made it illegal to sell a relinquishment of a preemption or a homestead. Relinquishments were bought and sold at every land office and land brokers' notices such as the following were openly displayed: "Relinquishments always on hand," "We have deeded land and relinquishments so cheap it will make you smile," "Relinquishments bought and sold." [46]

Instructions to the registers and receivers that went into effect on December 1, 1883, stated: "Entries and filings made for the purpose of holding the land for speculation and the sale of relinquishments are illegal and fraudulent, and every effort in the power of the Government will be exerted to prevent such frauds and to detect and punish the perpetrators." On 31 quarter-sections selected at random in Kansas, Nebraska, and Dakota there were 112 relinquishments, which helps to explain why the percentage of "failures" in timber culture, homestead, and preemption entries reached such high figures in the eighties.[47] With such open and flagrant violations of the law by the brokers, land dealers, and attorneys, and surely not unknown to the land officers who benefited from the number of entries that went over their desks, it is easy to understand why simple farm makers of either the older American or the new immigrant stock did not hesitate to sign documents that would bring them a nice fee or an extra quarter-section of land.[48]

Another feature of the land legislation that was not respected or enforceable was the requirement that the commuted homestead or preemption claims should not have been sold, conveyed, or mortgaged prior to the action of proving up and making payment for the land. This had obviously been the intention of Congress, yet mortgage companies did lend on both types of entry before they had reached the state of full ownership. A Kansas Congressman actually read a letter in the House from the Lombard Investment Company stating that it had been lending to persons wishing to pay up on their preemption claims or to commute their homestead entries to cash but now that the Land Office was cracking down on questionable entries, the risks were too great to continue.[49]

Former Congressman Frank W. Mondell of Wyoming, testifying before the Senate Committee on Public Lands in 1926 on measures to provide control of the rangelands, recalled that when he was working on railroad building in Nebraska in the middle 1880's there was a "continuous and almost unbroken line of covered wagons moving, not west, but east. As homesteaders proved up on their lands in the Box Butte country, as they called it, they went from the Land Office to the office of the loan companies which at that time were making loans on these lands, got their loans and went on. A great many of them never returned. Others came later and developed the land."[50] At that late time Senator Robert Stanfield of Oregon added

[46] Lewis Payson read these advertisements of Kansas firms in the House on June 28, 1886, *Cong. Record,* 49th Cong., 1st sess., p. 6238.

[47] *Land Office Report, 1888,* pp. 56-61.

[48] Thomas C. Donaldson, *The Public Domain,* p. 1017.

[49] *Cong. Record,* June 28, 1886, 49th Cong., 1st sess., p. 6231.

[50] *Hearings before the Senate Committee on Public Lands and Surveys on Grazing Facilities on Public Lands,* 1926, p. 101.

what was a bitter indictment of events of the past: "It is a matter of historical record, is it not, that it has taken about three migrations everywhere in the western movement to bring about permanent settlement?"

Seth Humphrey, who spent much of his life in Minnesota and Dakota Territory, in 1889 acted as agent for a Boston farm mortgage company which had been lending funds for some years on Dakota farms that were now in default. In the many thousands of miles he drove over the prairie searching for the farms in default he learned much about land entries in both Dakota and Nebraska. His observations are worthy of including here though they are somewhat jaundiced:

> On came the settlers by train and by prairie schooner from Minnesota, Wisconsin, and states farther east: bona fide farmers thrown together with ne'er-do-wells, forever shifting westward; renters tired of renting; others merely tired of the places they were leaving; and a heavy sprinkling bent only on 'proving up' their titles to quarter sections of land with the minimum of improvement required by law and selling out at a profit. In great numbers, too, came the pseudo-settlers ... who, though more or less sincere, never would be successful farmers—restless clerks, tired professors, schoolm'ams, and their like.
>
> Among them also were the chronic settlers—men who followed the taking up of government land as a habit. How did they manage to file on land in each of their several migrations, since the law allowed only one right to an individual?
>
> This disturbed them not at all. Bill Jones of the Wisconsin boom thought of himself as Hank Brown in Minnesota, then shifted to John Smith for his filing in Dakota.
>
> Aberdeen naturally took on the color of its adventurous population .... A few buildings ... housed the two banks, too many cheap lawyers, and swarms of land men whose free advice was the most expensive thing dispensed on the street. Loan sharks galore stood ready to finance the settler's outfit at three per cent a month.
>
> It was a great game, this settling of the new country, and as full of tricks as the frontier gambling house. Many a man working or clerking in town was 'holding down a claim' by going out to live in his little sod shack over Sunday. If it was too far away, he would go out even less often and take the risk of having his claim 'jumped' ....

Humphrey maintained that "by far the greater number of landseekers took up government land with the intention of unloading it on somebody else, the loan companies offering themselves as the easiest possible marks." High interest obtainable in the West attracted farm loan companies which might be either western or eastern but in either case drew their funds from the East. On occasion there was a plethora of such funds and agents competing with each other in placing their funds, paying little attention to the actual improvements on the quarter-section or to the reliability of the settler who was almost sure to get a loan of $500 to $1,000. Here was another way to profit, this time at the expense of a "soulless" eastern financial institution, and many westerners had no compunction about taking the loan and skipping, leaving the abandoned tract to the mortgage company. Humphrey was speaking of the years following 1889 when there was a marked backward movement of population out of the Plains states occasioned by severe losses from drought, destructive winter storms, and low prices. Of a northern Nebraska county Humphrey reported that of the first 41 pieces of land he visited only three were occupied by the original mortgagors, three were occupied by squatters, and the remaining 35 "had not so much as a board to show that claim shacks had once adorned them." [51]

[51] Seth K. Humphrey, *Following the Prairie Frontier* (Minneopolis, 1931), pp. 79-84, 105-106, 132, 164. Hamlin Garland has much to say about the rush to homestead on land in the James River country of Dakota in the eighties. The excited rush of people including school teachers was drawn there not so much to farm as to gain ownership of a piece of land that was sure to rise in value. Garland, like many others has no intention of remaining on the land and was only concerned to sell as soon as buyers appeared. He called his entry a preemption claim and must have proved up on it

(Cont. on p. 480.)

Settlement Proceeds Despite Abuses

That mineral and timberlands and lands enjoying access to water in the semi-arid regions were being acquired through fraudulent use of the settlement laws seems sufficiently documented but what of the lands east of the 102d meridian where grain was being raised? Were the Commissioners of the Land Office correct in assuming, as they did, that the settlement laws were so widely abused as not to justify the continuation of any of them but the Homestead Act?

It is striking that the Commissioners and the members of the Land Commission of 1879 appear to have been more concerned with failures than they were with successes. One of the best ways to determine success of the homestead law is to ascertain what proportion of the entries were carried to final entry and patent, always bearing in mind that all but ex-soldiers had to spend at least 5 years on their tracts before they could gain title, and for many the gap was longer because droughts forced them to leave the land for a year. Why did not the Commissioners point with some pride to the great number of farms that were being created, as the censuses of 1870, 1880, and 1890 revealed and, more directly, to the number of final homesteads and final entries of timber culture claims? Even if one were to concede that all the preemption entries and commuted homesteads were intended for quick resale or were made for the benefit of third parties, and no such view is correct, there still were almost as many final homesteads and final timber culture claims as there were preemptions and commuted homesteads in the 10 years between 1881 and 1891. A total of 251,389 persons carried their original homestead and timber culture applications to final entry in these years as compared with 254,609 people who either bought land through the preemption law or commuted their homestead to a cash entry. But it is not correct to assume that none of these latter entries were made for the purpose for which the laws were framed, that is to enable settlers to acquire land for farms.

The western critics of Sparks, particularly those in Kansas and Nebraska, were so angry with him for the statements he made as to the high proportion of fraudulent entries in their states and to his order suspending patents that they could scarcely confine themselves to parliamentary language. Some of their protests were absolutely silly, as when one Representative from Nebraska said that the administration of the laws could be trusted to the people and no spies in the form of investigating agents were necessary.[52] But when another Representative, in answer to the charge that 90 percent of the preemption entries were fraudulent, pointed to the many thousands of settlers moving upon the lands, creating farms, developing new counties, and cited census data in proof, there was no reply.[53] The West was growing mightily, notwithstanding all the fraud

for he records that he mortgaged it for $200, presumably $200 above the cost to him of $200, and with that in hand "started for the land of Emerson, Longfellow and Hawthorne, believing that I was in truth reversing all the laws of development, breasting the current of progress, stemming the tide of emigration." *A Son of the Middle Border* (New York, 1919), pp. 301-317.

[52] *Cong. Record,* 49th Cong., 1st sess., June 15, 1886, pp. 5735-36.

[53] *Cong. Record,* 49th Cong., 1st sess., June 15, 1866, p. 5737. Bishop W. Perkins, Representative from Kansas, had good reason to point out that despite all the fraudulent entries settlement of the West was proceeding at a rapid pace. Like James Laird of Nebraska whose furious diatribe against Sparks was attributed to the fact that the Commissioner had suspended entries in which he or his brother were interested, Perkins was not made happy by the charge that "the men who are clamoring against the order of Commissioner Sparks are largely those who manage the loan-office business in the west, who have traded upon these dishonest pre-emptions, who have made loans upon them." Perkins ran a loan office business in Kansas where much fraud was charged. *Ibid.,* p. 5739.

that Sparks and his agents uncovered. Sparks might for his own benefit have taken a leaf from Joseph Wilson's book. As Commissioner of the Land Office in the sixties Wilson went to great length in describing the public land states and territories and their development as encouraged by a benevolent land system. He never uttered a word of criticism. Sparks saw only the unfavorable side, in his opinion almost everyone in the West was trying to take advantage of badly drafted and weakly or corruptly administered land laws.

Lawrence Lee, who has made an intensive study of land entries in western Kansas, has offered an explanation of why settlers during the great boom of the middle eighties disliked the 5-year requirement of the homestead law. Knowing that in the past swift changes had come in the weather cycle, they preferred to acquire ownership of their land more quickly through preemption or commutation, particularly while credit was still abundant. After 1887, when credit tended to dry up like the weather, a much larger number of settlers then gained titles to their tracts through the required 5 years of residence.[54] Lee's data is not sufficiently clear nor based on a wide enough investigation to enable him to show statistically what proportion of settlers who tried to homestead failed, what proportion commuted, and what proportion abandoned their claims or sold relinquishments to others. However, from the intensity of his investigation he arrived at a statement he could not statistically prove and it is, therefore, an intuitive guess: "Despite the number of failures, many, many of the would-be homesteaders who went to Kansas were accounted successful homesteaders. They were able to turn their freely granted government land into places of permanent abode. They weathered all adversity and contributed their traits of perseverance and pluck, their willingness to adjust to new environmental conditions to the upbuilding of modern Kansas." [55]

It is impossible to correlate the census data of farms for the area beyond the 100th meridian with the various settlement entries without an intensive study of the entries and the original census schedules, but some information is available for Kansas.

In the 31 Kansas counties either bisected by or west of the 100th meridian there were in 1900, 13,040 farms containing 6,029,300 acres or having an average size of 462 acres. The lowest average was in Norton County on the 100th meridian (263 acres) and the highest was in Clark (2,754 acres) in southern Kansas and likewise on the 100th meridian. Settlers or ranchers in 20 of the 31 counties had on the average more land than a homestead, timber claim, and preemption would amount to and they had probably acquired their additional land from others who had gained title legitimately or through commutation and preemption for resale, or they might have bought from the Kansas Pacific or the Santa Fe Railroads. Settlers in the 11 other counties could have acquired their land through a homestead, a timber claim, or a preemption.[56] Since Congress had not been willing to liberalize the homestead unit the Preemption and Timber Culture Acts seem to have been essential for the establishment of land use units of reasonable size in the region west of the 100th meridian. What was necessary was not repeal of these measures but the adoption of adequate safeguards to prevent them from being abused by timber interests, cattlemen,

[54] Lawrence B. Lee, "Kansas and the Homestead Act, 1862-1905" (Ph.D. dissertation, Univ. of Chicago, 1957), 488-93.

[55] *Ibid.*, p. 494.

[56] *Twelfth Census of the United States, Agriculture* (Washington, 1902), computed from Parts 1 and 2.

and speculators. Sparks was aware that much of the abuse was occasioned by cattlemen who, to control the range they were using, had their employees enter tracts having access to water. Sometimes, reluctantly, the stockmen had their hands make even more extensive entries, though they recognized that ownership had tax liabilities that grazing cattle on the public domain did not involve. Large entries of this sort seemed necessary to protect ranchers from migratory persons who invaded grazing areas with their homestead privileges and the intention of compelling stockmen to buy them out. To invoke the law against these migratory and bogus "settlers" took courage.

After Sparks' resignation the succeeding Commissioners retreated into a quieter acceptance of the laws instead of trying to lead, if not compel, Congress to adopt legislation they wanted. Their reports became more bland, less informative, and much less critical, though it is clear that the system of contracting surveys still piled up difficulties for later surveyors, landowners, and lawyers, and forced the resurvey of large areas. Incompetent, inefficient, and fraudulent surveys compelled Congress to allocate from 9 to 50 percent of the total appropriations for surveys for examination of the surveys and for resurveys during the years 1885-1900. Beginning in 1896 Congress appropriated $55,000 for examinations and resurveys and in 1899, $75,000 or 20 percent of the total appropriation.[57]

Hostility to Large Ownerships

The efforts of those Congressmen who favored repeal of the Preemption and Timber Culture Acts, extension of the period before homesteaders could commute their entries to cash, and revision of the Desert Land Act were in no way diminished by the dismissal of Sparks. Under the very able leadership of William S. Holman of Indiana and Lewis E. Payson, Chairman of the Public Lands Committee of the House—neither of whom was given to exaggeration or to the usual rodomontade that filled the pages of the *Congressional Record* at the time—the House was brought to see how these measures were abused by lumbermen, cattlemen, and speculative groups. Some of the lands they acquired were not at all fit for settlement but had valuable water privileges, timber, or coal deposits. Making the efforts of Holman and Payson somewhat easier was the bitter, almost xenophobic hostility of the times to alien landowners.

English and Scottish capitalists had invested millions of dollars in the development of the cattle industry in the high plains, had enclosed great areas of land without title and at the same time had acquired title to large tracts of land through "easy administration of injudicious laws . . ." as Lewis Payson put it in his report to the House in 1886. Payson's report included a table showing the large holdings of aliens as, for example, Lord Dunraven's holding of 60,000 acres in Colorado, the Dundee Land Company's holding of 247,000 acres, and the Marquis

[57] Beginning with 1885 the Commissioners broke down the appropriations for surveying, either as provided by Congress or as determined by the Land Office. Harrison's first Land Commissioner or someone on his staff prepared a supplement to the *Annual Report, 1889,* which is most curious for what it contains and what it leaves out. It seems to have been intended as a partisan history of the public domain for it concentrates on "The Notorious Yazoo Land Frauds," William Henry Harrison's "exposure of land frauds," "corrupt receivers of public moneys—wholesale defalcations—plunder of government and settler" and leaves the impression that until 1861 public land administration was thoroughly corrupt. In 1861 enlightenment, integrity, intelligent and forward-looking management replaced the "corrupt corps" with their "infamous schemes of systemmatic swindling." The 20-page statement (pp. 67-86) is unsigned, but of course the Commissioner was at least responsible for including it.

of Tweeddale's 1,750,000 acres, and others, totaling 20,747,000 acres. The report estimated that an additional 10 million acres in smaller holdings were owned by aliens. This was effective documentation of the complaint that the public land system was making for large ownerships altogether too much like the land ownership pattern in England.[58] The feeling against anti-alien land ownership was exacerbated by the rackrenting policies of William Scully in Illinois, Kansas, Nebraska, and Missouri where he had acquired 220,000 acres which he had rented to tenants. A wave of anti-alien-landowning measures swept the West with news of these huge holdings. Thirteen states adopted restrictive measures banning further acquisition of lands by aliens and in 1887 Congress bowed to popular feeling by restricting ownership of land in the territories to citizens.[59]

There was emerging deep and widespread resentment against a land system that permitted the establishment of large alien ownerships, that enabled the railroads to withhold their millions of acres of land from sale and development, and that allowed native "monopolists" to establish great empires of timber and grazing lands on the public domain. The Census of 1880, which revealed the existence of farm tenancy in the newer states as well as its rapid growth in many older ones, contributed to this resentment. Kansas and Nebraska, where farm making was still going on and where the number of homestead entries reached its peak in the eighties were shown to have, respectively, 16 and 18 percent of their farms operated by tenants in 1880, the first year for which figures were available, and 28 and 24 percent so operated in 1890. South Dakota, a state only one year old, had 13 percent of its farms tenant operated in 1890; in four of its counties the number of tenant operated farms ranged from 20 to 26 percent. These statistics on tenancy alarmed thoughtful people who feared that at the rate tenancy was growing, tenant farmers would soon out-number owner operators of farms. Thus the old Jeffersonian ideal of America as a democratic country of small landowners whose stake in the land would assure their support of sound but conservative measures would not be realized.[60]

Land monopolization, alien ownership, the now much detested railroad land grants, tenancy, and mortgage indebtedness attracted the attention of able writers like Henry George and George W. Julian who, in their sometimes unrestrained fashion, may have exaggerated the data they were presenting and their possible evil consequences. Together with other writers who were focusing on the way that the settlement laws were permitting western land to be "monopolized," they provided the kind of support Holman and Payson needed to carry through their reform measure.[61]

[58] The table was presented to show that public lands of the United States were being gobbled up at a dangerous rate by English aristocrats but it breaks down somewhat on examination. The largest holding of 3 million acres was in Texas, not a public land state, another, of 600,000, the second largest, was in West Virginia. Furthermore, some of the holdings were surely exaggerated. Yet discounting all this, there was a large amount of land that had been acquired within a few years by aliens and much by misuse of the land laws. For the list and the report of Payson see *House Reports,* 49th Cong., 1st sess. (Serial No. 2445), Vol. XI, 3455, p. 2. See also Herbert O. Brayer, "The Influence of British Capital on the Western Range—Cattle Industry," *The Tasks of Economic History,* Supplement IX (1949), pp. 85-98; and Ernest S. Osgood, *The Day of the Cattleman* (Chicago, 1929), pp. 98 ff.

[59] Gates, *Frontier Landlords and Pioneer Tenants* (Ithaca, N.Y., 1945), pp. 57-59.

[60] The census data is partly computed from the agricultural volumes of the *United States Census, 1880* and *1890.*

[61] Roy M. Robbins, *Our Landed Heritage the Public Domain, 1776-1936* (Princeton, 1942), pp. 269-70; Patrick W. Riddleberger, *George Washing-*

(Cont. on p. 484.)

General Revision Act of 1891

Sentiment for land reform being strong in the House of Representatives in 1886, Holman and Payson found little difficulty in persuading that body to vote for repeal of the Timber Culture and Preemption Acts, but the Senate saw things differently. It favored repeal of these laws but linked repeal with saving clauses that would have confirmed all entries suspended by Sparks that did not have on their face clear evidence of fraud, thereby undoing much of the work of the Commissioner in trying to separate fraudulent from legitimate entries. The two Houses could not agree on a compromise. Subsequent efforts likewise failed. In 1890 both Houses again passed bills to repeal the Timber Culture and Preemption Acts and again agreement between the two versions seemed impossible until after the election of 1890 when there was a big turnover of seats with many opponents of repeal defeated. In the following lame duck session Samuel R. Peters, of Kansas, who had been defeated, declared that he had been unalterably opposed to repeal but now he thought it necessary. Agreement was reached and the General Revision Act of March 3, 1891, became law.[62]

Saving all rights to land under the Preemption or Timber Culture Acts existing before the enactment of new measure, the Act of 1891 provided for the repeal of the Timber Culture and Preemption Acts, extension of the period after original homestead entry from 6 to 14 months before it could be commuted to a cash entry; it allowed persons who had met requirements of the Timber Culture Act for 4 years to commute their entry to a cash entry, modified the requirements for the completion of desert land entries, halted all public offering of land except for abandoned military reservations and isolated fractional tracts, and denied owners of more than 160 acres the right to make a homestead entry. The measure also modified an Act of August 30, 1890, limiting to 320 acres the amount of land individuals could acquire in the aggregate under all Federal laws by excluding mineral lands from the limitation. A final section authorized the President to create forest preserves "wholly or in part covered with timber or undergrowth, whether of commercial value or not. . . ."

For the first time Congress had given the public land laws a long and careful study, had tried to eliminate legislation it regarded as outdated or subject to abuse, had tightened conditions for desert land entries and commutation of homestead entries and, perhaps most important, had authorized a fundamental change in policy whereby forest lands could be placed in reserve status and not open to acquisition with any of the public land laws.

By extending the period from 6 to 14 months before homesteaders could commute their entries Congress hoped to curtail the misuse of the law but, as later events were to show, its hope did not materialize.

Instead of trying the more courageous but politically dangerous way of reforming the land system through administrative action, as Sparks had attempted to do, and giving the right to administrative officers to subpoena witnesses in cases where the investigating agents had sufficient evidence to secure indictments, as had been recommended by the Commissioners for years, Congress chose to remove the most criticized legislation. In so doing it eliminated much of the flexibility that had enabled persons in the High Plains to acquire control over if not ownership of 320 or

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ton Julian, Radical Republican (Indianapolis, 1966), pp. 302-310; Charles A. Barker, *Henry George* (New York, 1955), *passim.*

[62] *Cong. Record,* 51st Cong., 2d sess., Feb. 28, 1891, p. 3615.

480 acres, as conditions seemed to make necessary.[63]

Reminiscences and various documents suggest that the Timber Culture Act had been used by settlers chiefly to hold quarter-sections until they could arrange to preempt or homestead them or gain valuable relinquishment rights for resale. This is fairly evident from the fact that of the 290,278 original timber culture entries only 65,265, or 22 percent, were carried to patent by fulfilling the obligations of the Acts of 1873 and 1878, as compared with 53 percent or original homestead entries that were completed and patented. Commutation of timber culture entries was permitted persons who had complied with the requirement for the setting out and care of trees on 10 acres for 4 years with a payment of $1.25 an acre.[64] Only 7,108 persons took advantage of this provision.

Timber and Stone Act Extended

Instead of plugging up the loopholes in or repealing the Timber and Stone Act, Congress on August 4, 1892, extended its provisions to all the public land states—an interesting commentary on the power of the speculators and dealers in timber.[65]

It has been seen that the preemption laws were most important in areas where lands were not yet open to sale and subject to unlimited entry, and that after 1841 they also gave protection to the settler on unsurveyed land. Preemption entries were lumped together in the records with other cash entries; hence, until 1881, there are no separate preemption entry statistics. Thereafter, with the area of offered land diminishing rapidly and the greater part of newly surveyed land being reserved for homesteaders and not offered for sale, the Preemption Act became increasingly important as a supplement to homestead, providing the means by which settlers could acquire 320 acres in 5 years and 6 months at the shortest. It was also the quickest and easiest way for cattle, mining, and timber companies using dummy entrymen to gain ownership of many quarter-sections quickly. Successful preemptions were first listed in 1881 with 5,050 entries; the following year they reached 9,255; 15,221 in 1883; and 21,286 in 1884. Sparks' campaign against fraudulent preemption entries may have been responsible for the reduction to 15,800 entries in 1885 and to 15,712 in 1887, but Cleveland's reversal of Sparks' suspension order and the Congressional attack upon him leading to his removal coincided with a big increase in entries to 23,151 in 1888 and 19,586 in 1889. A total of 170,110 preemption entries for 25,288,900 acres were patented between 1881 and 1891. These totals do not seem large in comparison with the 523,748 original homestead entries in the same period but there was abundant evidence that many preemption entries were being filed for parties other than those making the entries. The persistence of fraud and evasion of the purpose of the measures and the difficulty of distinguishing legiti-

[63] Sparks wrote in 1886 (*Report, 1886,* p. 101): "The necessity for empowering registers and receivers to summon witnesses in public-land cases has repeatedly been brought to the attention of this office. The State of Minnesota, by legislative enactment, has given such authority to United States local land officers in that state, but a general act of Congress, extending such power to all registers and receivers, is required, both in the interest of the Government and of private parties." Sparks said that fraudulent claimants had no difficulty in assembling their witnesses but the government case broke down commonly because of this lack of authority. Until 1903 Commissioners continued to beg Congress for an act authorizing the power to compel the attendance of witnesses but without success.

[64] *Land Office Report, 1921,* p. 65. The number of final entries there appears somewhat smaller than the figure for 1904 at the end of this chapter. I cannot reconcile the difference.

[65] 27 Stat. 348.

mate from fraudulent entries convinced every Commissioner of the Land Office from 1874 and reformers in Congress of the necessity of repealing all preemption laws.

As with timber culture claims, all preemption claims on which rights had been established were saved under the Act of 1891; in the next 10 years 14,152 additional preemption entries were admitted. Thereafter for years a small number of preemption claims were presented and allowed.

Irreconcilable Policies

It was later to be charged that by making the land system more rigid through the repeal of the preemption and timber culture laws Congress made it even more necessary for ranchers and others seeking to gain ownership of economic units to resort to fraud in a more systematic way than they had before 1891.

S. W. Lamoreaux, Land Commissioner in the second Cleveland administration, followed the useful practice of summarizing in more detail at the end of his formal annual report the recommendations he had made earlier. In his final report for 1896 he recommended (1) that appropriations for surveys be made continuous so that funds contracted and in process of being used would not have to be reappropriated at the end of the fiscal year; (2) that legislation be enacted authorizing the appointment of a surveyor general for Alaska; (3) that a national irrigation commission be created to make proposals for the best and most appropriate way of developing the arid lands; (4) that the attendance of witnesses at hearings and contests before the local land officers be made compulsory by law; (5) that legislation be enacted to provide protection for public timber from pilfering and fire; (6) that legislation be enacted for proper administration of the national forests.[66]

Unlike Sparks and the at-times-tolerant Lamar, Lamoreaux, who had close ties to the Bourbon Senator William F. Vilas, was no reformer.[67] His administration of the Land Office was not marked by any serious effort to improve the quality of service, to eliminate spoilsmanship or to protect the public lands from abuse and fraudulent acquisition.

It seemed to have been the usual game of the Commissioners when they first came into office to report that the surveys of their predecessors were carelessly, inaccurately, or fraudulently done and that more rigid inspection of all surveys was necessary. Thus Binger Hermann found in 1897 that surveys done during Lamoreaux's tenure had been accepted and paid for after only superficial investigation, and in some instances without any field examination at all.[68] Hermann's principal recommendations of 1897 called for: authority to subpoena witnesses in land contests, effective penalties against pilfering timber on public lands, ample laws and appropriations to protect and administer the national forests, and repeal or modification of the Timber and Stone Act.[69]

By 1902 Hermann's reports were showing a growing volume of ineptitude, abuse, and outright fraud in local management of the public lands. Nine survey contracts were suspended, seven surveys were rejected for carelessness, inaccuracies, failure to mark trees and install corner monuments, erroneous measurements, and negligence. A "systematic conspiracy" was unearthed to defraud the government of land through the use of Soldier's Additional

[66] *Land Office Report, 1896*, p. 81.

[67] Dewey W. Grantham, Jr., *Hoke Smith and the Politics of the New South* (Baton Rouge, 1958), pp. 90-92.

[68] *Land Office Report, 1897*, p. 53.

[69] *Ibid.*, p. 86.

Homestead scrip; other "notorious frauds" were being discovered, and a number of convictions won; the greater part of western Nebraska was said to be again illegally fenced, and one company in New Mexico was said to have fenced 1,079,000 acres of public lands. The investigating agents were swamped with reports of misuse of the public land laws, 1,501 entries were held for concellation, 921 were cancelled, and 5,468 cases were pending. Hermann took pride in the fact that although misuse was increasing so also were collections from fines, judgments, settlements, and sales of confiscated logs. The total collected in 1902 was $284,078 or nearly $100,000 more than the cost of maintaining the investigating staff. The Commissioner could report that the 8,000 acres of public lands of Jesse D. Carr in Oregon and California had finally, as a result of a court order, been cleared of its illegal fencing. An agent who had investigated fencing on public lands in Nebraska reported that to protect their illegal fences, cattlemen had hired "thousands upon thousands" of "loafers, tramps, railway graders, negroes" to file homestead entries along their lines. If the entries were suspended, cattlemen would demand a hearing, appeal from the Commissioner to the Secretary, then to the courts. All this would take a number of years and meanwhile they would maintain their fences. The agent called the homestead law a dead letter in Nebraska where it was "openly boasted that a genuine, legal homestead entry" had not been made for some time. The agent was not prepared to go as far as this though he did say that only a small part of the entries being made were legal.

A letter of President Theodore Roosevelt written in 1902 throws some light on the fencing question that was giving him great difficulty. He had ordered taking down the fences "of a very great and very arrogant corporation. This has to be done; yet at the same time I find that near by there are two or three hundred small fellows who would be homesteaders in fertile country but who cannot afford to take up only 160 acres when it needs 40 acres to support a steer and who have therefore fenced in enough for 100 head—have fenced in 400 acres—who live in a one-room sawed cabin. The equities of the case as regards these genuine settlers are different, but the law is [unfortunately] the same, and how to enforce it with the minimum of hardship offers a not altogether easy problem. I shall have to take a little time about it and probably get assistance from Congress but it will be done." It is not altogether clear that Roosevelt was prepared to follow through on this boldly announced position for when a prominent Senator was charged with enclosing 47,000 acres of public lands the President permitted the matter to drag on for years and only toward the end of his administration was effective action taken.[70]

Another Roosevelt comment worth quoting relates to illegal use of the Timber and Stone Act to acquire a valuable tract to sell to a lumber company. The letter was in response to remarks in an Idaho paper critical of the administration's forest policy and complaining that homesteaders could obtain only a small price for the re-

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[70] Letter of May 5, 1902, to Hamlin Garland, in Elting E. Morison, *The Letters of Theodore Roosevelt* (8 vols., Cambridge, Mass., 1951), 3:257; T. A. Larson, *History of Wyoming* (Lincoln, Nebr., 1965), pp. 380-83. Unfortunately *Letters* offers little information concerning the spate of land problems coming up in 1901-1909. In President Roosevelt's State of the Union Message of Dec. 2, 1902, it is stated that there had been little interference with illegal enclosures in the past "but ample notice has now been given the trespassers, and all the resources at the command of the Government will hereafter be used to put a stop to such trespassing." Richardson, *Messages and Papers of the Presidents,* (1904), X, 527.

linquishment of timber claims. Roosevelt replied:

> Such a so-called homestead is not a real homestead at all. He is entitled to no sympathy. He is not the man who tills the soil, builds the home, and brings permanent prosperity to the region. This is the man who skins the country and moves on. Otherwise he would not relinquish his claim, as he admittedly does at the first favorable opportunity, to those who are seeking investments in timberlands. To the real homesteader who tills the soil and builds a house to live in, nothing should be grudged. He is there to stay. To the fraudulent homesteader who builds a shelter for the night under tall timber, no encouragement is due. He takes all he can get and moves on. Sympathy for such a man is sympathy for one who is engaged in fraudulent transactions; if sincere it is wasted; and it is hard to see how it can be sincere on the part of one who takes the trouble to find out the facts.[71]

Congress, in adopting the Reorganization Act of 1891 had done nothing to change the attitude of western people: they favored transferring public lands to private ownership as rapidly as possible and were not very squeamish as to how that alienation was achieved. Neither had it eliminated the influence of the spoils system from contract for surveys and from appointments of registers and receivers and superintendents of newly created forest reserves, nor had it made it feasible for local officers to give adequate attention to the proof of improvements by homesteaders and desert land entrymen. Reports continued to come in of the widespread abuse of the commutation provision of homestead, though the period was now extended to 14 months, of the Desert Land Act, and of the Timber and Stone Act. At the same time there was a certain inconsistency in the reports of the Commissioner of the Land Office who was now handling almost irreconcilable policies: the older one, in which he took pride, reporting annually the amount of the land that was patented to states, railroads, and individuals and the income received from sales, and the other and altogether new ones, of administering the forest reserves, protecting them from fire and pilferage.[72]

[71] Morison, *Letters*, 4:1217-18.

Roosevelt Appoints Commission

In his annual message of December 2, 1902, President Roosevelt mentioned the problem of fencing on public lands and the abuse of the Timber and Stone and Desert Land Acts and the commutation clause of the Homestead Act and urged that "if the Congress finds difficulty in dealing with them from lack of thorough knowledge of the subject" that it make provision for a commission "to investigate and report upon the complicated questions involved."[73] Congress was disinclined to take the hint and the President went ahead and created a commission himself. It consisted of W. A. Richard, former Governor of Wyoming and in 1903 successor to Hermann as Commissioner of the Land Office; Frederick H. Newell, Assistant Hydraulic Engineer of the Geological Survey from 1888 to 1902 and Chief Engineer of the Reclamation Service from 1902 to 1907 and Commissioner from 1907 to 1914; and Gifford Pinchot.

Hearings were held by the commission in Washington and elsewhere and much of the time of Pinchot and Newell was given to discussions with governors, land boards, other public officials, and private citizens concerning land questions. Both men attended meetings of the National Livestock Association and the National Wool Growers' Association where they had opportunities to talk with livestockmen and at the same time to present the point of view of conservationists interested in preserving, protecting, and utilizing the

[72] Hermann's and Richards' *Reports* reflect the irreconcilability of the two policies.

[73] Gifford Pinchot, *Breaking New Ground* (New York, 1947), p. 244; Richardson, *Messages and Papers of the Presidents*, X, 527.

national resources. A detailed questionnaire was submitted to a number of stockmen asking about the use of the range, methods of improving its carrying capacity, and conflicts between users. Congress having declined to appropriate funds for the work of the commission, its members drew heavily upon the staff of the Division of Forestry, the Geological Survey, the Reclamation Service, and the Bureau of Plant Industry for aid in gathering data and preparing reports with recommendations for administrative and congressional action. A reading of the two reports of the commission suggests that it was created to give support to views already well crystallized in the minds of Pinchot and Newell.

The commission, like all interested in the administration of the public lands, felt it necessary to defer to the supporters of homestead who maintained that the only correct way to deal with the public lands was to give them away to as many people as possible in tracts of 160 acres or more. It therefore declared as its basic principle that all lands should be held for "actual home builders." This called for classification of the remaining public lands to determine what parts could be disposed of for development as small farms, as dry farming tracts, or as grazing homesteads, and which parts should only be leased. Much the larger portion of the remaining public lands was suitable only for grazing. The open rangeland had become, in effect, a huge grazing commons, subject to use and abuse by stockmen and the object of bitter warfare between cattlemen and sheepmen and between them and settlers. Overgrazing and decline of the carrying capacity of the range had been the result; indeed some areas had been virtually destroyed for grazing.

One of the most useful features of the commission's report was a 30-page analysis of the leasing policies of Texas, Wyoming, and of the Northern Pacific Railroad by Frederick V. Coville, a botanist of the Department of Agriculture. Among the advantages reported for these leasing systems were: (1) stockmen could plan their operations more carefully by knowing how much range capacity they could count on; (2) stockmen with range privileges would manage it prudently to conserve and develop it; (3) roundup costs were less within enclosed ranges; (4) supplementary feeding with dry land forage crops could be done more easily; (5) long drives of stock looking for forage would be less necessary; (6) water supplies could be developed with expenditures that were not justified on the open range; (7) breeding could be controlled and high grade bulls used, an expense only justified on enclosed ranges; (8) cattle stealing and range warfare would be eliminated or reduced.[74]

The Timber and Stone Act, long recommended for repeal, came in for a detailed examination as to the way entries under it were being abused in three counties in Oregon and Washington. Between 14 and 25 percent of the entries were made by women; in one county 44 percent of the entries were made by nonresidents; 50 percent of the entries were transferred to timber and mill companies at prices as high in some instances as $3,000 for a quarter-section or less. Although the act was framed for actual settlers needing a source of timber for fuel, fencing, and building, the agent who made the investigation stated that comparatively none of the land thus entered was used for farming. On the other hand it was brought out that parties entering land under the act and subsequently selling it used the proceeds to acquire either farm homes or town property. Entries reached their high-

[74] *Report of the Public Land Commission, S. Doc.*, 58th Cong., 3d sess., Vol. 4 (Serial No. 4766), No. 189, pp. 44-46.

est point in 1903 and 1904 when the commission was making its study.

Commutation of homestead entries over a wider area was examined. In the timber belt of Minnesota 89 percent of the commuted entries were transferred to other parties, 36 percent in the agricultural belt, and 96 percent in the mineral belt, the transfers mostly being made either by the day of payment or shortly thereafter. An investigating agent found that the profits from entering and commuting homesteads went not to the entrymen but to the person who arranged their entries. Among the commuters in the timber and mineral belts were "clerks, business men, professional men, school-teachers, mechanics, waitresses, woodsmen, cruisers, and city laborers." Less than 10 percent were acquainted with agriculture. Of the commuters in the agricultural belt one class was actual farm makers who bought their titles within 14 months as the law permitted so as to be free to live elsewhere during the winter when farming duties were not required. They acted in good faith, the agent reported. A second class, mostly immigrants, commuted either because of illness, bad luck with crops, to return to a city for work, or to raise funds with which to finance another try elsewhere. The third class was retired farmers, land speculators, bankers, business and professional men, clerks and school teachers who were solely interested in selling as quickly as possible for the expected profit.

In the Minot, North Dakota, Land District in 1903-04 there were 2,756 commuted homestead entries as compared with 293 final entries. Ninety percent of the commuters left their claims once they got title, 87 percent borrowed to enable them to commute. The United States Commissioners who had taken the proof of settlement in these cases had worked closely with the loan agents and had winked at the obvious evasion of the law's requirements. In this district and elsewhere in the Dakotas, agents reported over and over that to a very large extent the lands were being entered with the intention of commuting and selling as quickly as possible. Large areas were marked with disintegrating claim shacks but little evidence of other improvements. The cattlemen, whether they bought the claims or not, seem to have been the principal beneficiaries of these homestead entries.

A representative of the Bureau of Forestry who made a special study of commuted homesteads in North Dakota recommended changes that merited serious consideration. Among these were a more rigid inspection of commuted entries, an increase in residence from 14 months to 30, outlawing the practice of government commissioners "soliciting proofs or having business relations with loan companies," and requiring that all homestead entries be investigated at regular intervals. He was optimistic that if all these suggestions were adopted and rigorously enforced the entries for non-farm-making purposes would quickly be eliminated, but if such rigorous enforcement was impossible be urged the repeal of the commutation clause.[75]

The commission found that little good could be said for the Desert Land Acts. As enacted in 1877 as much as a section of land could be acquired for $1.25 an acre provided it was to be "reclaimed." In 1891 the amount that could be acquired was limited to 320 acres, improvements costing $3 an acre to bring water to the land were required, and one-eighth of the land had to be put under cultivation. The wording of the law enabled both husband and wife to acquire 320 acres whereas, under homestead, double entries were not permitted. Capitalist speculators and cattlemen were able to build up large holdings by getting employees and others to

[75] *Report of the Public Land Commission,* pp. 106-126.

enter and acquire land for them and then assign it. The assignment clause of the Act of 1891 on its face seemed intended to prevent assignment of rights but by a peculiar interpretation it was held to permit transfers.

The commission's recommendations were brief: classification should be pushed; the President should be authorized to set aside grazing districts and the Secretary of Agriculture be permitted to establish controls over them and to charge moderate fees for use of the range; the right to exchange land within the forest reserves for lands outside should be withdrawn; and provision should be made for the purchase of needed privately owned land within the reserves; the Timber and Stone Act should be repealed; and the sale of timber on unreserved land should be authorized; 3 years' residence should be required before commutation; 160 acres should be the maximum to be acquired under the Desert Land Act and actual residence for 2 years with specified improvements and the production of a valuable crop on one-fourth of the area and proof of provision of an adequate supply of water should be required.

In conclusion, the commission said: "The fundamental fact that characterizes the present situation is that the number of patents issued is increasing out of all proportion to the number of new homes."[76] Though the correlation between the number of final entries in any western state and the number of farms shown in existence in those states was not worked out by the commission, some attention may be called for here. For example, the Census of 1900 shows that North and South Dakota—in which the Northern Pacific Railroad had a land grant 80 miles wide on the alternate section pattern which had long been on the market—had 97,954 farms, whereas 120,678 homestead, timber culture claims, and commuted homestead entries had been patented. In Wyoming, through which the Union Pacific Railroad had been built by 1869, there were 5,880 farms or ranches in 1900, many of which were established on land acquired from the Union Pacific, but 6,675 homesteads, commuted homesteads, and timber culture claims had reached the patent stage.

What was the impact of the commission's Report? Congress carried out only one recommendation — the repeal of the forest lieu provision of the Act of 1897— which is treated later. Actually, repeal was accomplished before the report of the commission was transmitted to Congress, and was the result of evidence then coming out of the extensive frauds involving members of Congress, land officers, and other persons in authority who had taken advantage of loopholes in the provision. It was achieved because "the lieu land privilege displeased the west as much as it did the commission", says Miss Peffer.[77] Furthermore, repeal was made palatable to major economic groups having exchanges under way, all of which the repeal measure saved.[78] Otherwise, the recommendations were disregarded, at least for the moment, by a Congress whose western members were generally hostile to the report, and elsewhere it attracted little attention. Classification, as heretofore, was only to come piecemeal; commutation, timber and stone and desert land entries were to continue to be subject to great abuse; and grazing control on public lands, save within the national forests, was to be delayed for another generation.

Two steps taken in 1908 prevented abuse of the settlement laws to some extent. Congress in an Act of March 28, 1908,

[76] *Ibid.*, pp. xii-xxiv.

[77] E. Louise Peffer, *The Closing of the Public Domain, Disposal and Reservation Policies* (Stanford, Calif., 1951), p. 48.

[78] Act of March 3, 1905, 33 Stat. 1264.

limited entries under the Desert Land Law to surveyed land and banned the assignment of entries. This privilege had in the past enabled corporations to acquire control of large areas. At the same time the Land Office issued new instructions concerning commutation which required that the full 14 months of residence as prescribed in the Act of 1891 should be spent entirely on the land before the entry could be completed. Up to that time homesteaders had been permitted to live a portion of the 14 months away from their land. A third step that may have partly resulted from information attained by the commission on fraud in land entries was the order of President Roosevelt of January 25, modified by another order of February 12, 1907, requiring that with some exceptions no patent or other evidence of title should be issued until a field examination had been made or information of equivalent character had been obtained.[79]

Reaction to Roosevelt's order suspending the issuance of patents was much the same as that accorded Sparks' order of 1885. Members of both Houses attacked it as unwarranted and tried to have adopted a measure to forbid the use of funds for investigating agents to take any action against a person once the final receipt had been issued. Before enactment it was slightly blunted in cases where there was adequate ground for suspecting fraud. The action of Congress in thus trying to prevent the administrative officers from enforcing the law was held to be justified on the ground that the agents were causing legitimate settlers serious harm in their repeated efforts to unearth fraud.[80]

Roosevelt's strong pursuit of conservation, his continued lecturing to Congress, his use of commissions to emphasize and provide the substance for reforms he favored, his willingness to stretch authority and to make what some regarded as arbitrary decisions, his close relations with Gifford Pinchot, whose forest and land policies constantly stirred up opposition, all tended to weaken his position. Yet, the record of Theodore Roosevelt's administration shows his major accomplishments were in the field of forest conservation, where the West least liked his leadership, and in water conservation through reclamation, which the West strongly approved.

[79] Mary Wilma M. Hargreaves, *Dry Farming in the Northern Great Plains, 1900-1925* (Cambridge, Mass., 1957), pp. 341-42; Morison, *Letters*, 5:586.

[80] Hargreaves, *Dry Farming*, pp. 341-43.

Total Timber and Stone Entries

Year	Number	Acres
1879	6	769
1880	185	20,038
1881	363	42,917
1882	728	95,238
1883	2,101	297,735
1884	2,392	339,419
1885	1,027	139,301
1886	429	50,693
1887	655	80,622
1888	2,420	341,968
1889	2,361	334,519
1890	3,454	509,896
1891	1,849	259,913
1892	1,006	137,539
1893	1,382	182,340
1894	1,259	153,081
1895	627	70,066
1896	559	66,182
1897	357	40,609
1898	573	60,955
1899	537	59,019
1900	2,385	300,019
1901	3,031	396,445
1902	4,022	545,253
1903	12,249	1,765,222
1904	9,435	1,306,261

NUMBER AND ACREAGE OF ENTRIES UNDER THE HOMESTEAD, PREEMPTION, DESERT LAND, TIMBER CULTURE ACTS IN THE LEADING STATES TO 1904

Final Homesteads (1868–1904)

State	Number	Acres
Dakota	85,327	13,160,631
Nebraska	73,121	10,235,825
Kansas	76,311	10,959,524
Minnesota	67,973	8,383,785
Arkansas	46,259	5,178,300
Oklahoma	43,985	6,697,549
California	35,409	4,954,572
Alabama	34,109	3,882,489
Missouri	30,164	3,244,221
Washington	29,186	4,193,269
Wisconsin	24,332	2,641,749
Oregon	23,888	3,493,637
Colorado	20,719	3,095,259
U. S.	718,819	96,495,030

Preemptions 1881–1894

State	Number	Acres
Dakota	56,592	8,705,035
Kansas	23,671	3,515,574
California	15,727	2,818,198
Nebraska	23,443	3,469,517
Colorado	18,372	2,784,767
Washington	11,738	1,588,611
Oregon	10,916	1,625,292
U. S.	185,237	27,332,315

Final Desert Land Entries to 1904

State	Number	Acres
Montana	5,802	1,192,418
Wyoming	3,221	865,605
Idaho	2,440	473,548
Utah	1,500	259,335
California	1,078	274,776
U. S.	16,827	3,720,620

Final Timber Culture Entries to 1904

State	Number	Acres
Nebraska	16,937	2,544,307
South Dakota	15,105	2,311,502
Kansas	12,844	1,899,440
North Dakota	7,975	1,238,742
U. S.	65,292	9,745,433

Timber and Stone Entries to 1904

State	Number	Acres
California	15,463	2,189,332
Oregon	13,065	1,937,206
Washington	10,598	1,473,593
Minnesota	6,077	753,312
U. S.	55,201	7,575,295

ORIGINAL AND FINAL ENTRIES OF HOMESTEAD AND TIMBER CULTURE CLAIMS AND PREEMPTION AND COMMUTED ENTRIES[a]

Year	Original Entries		Total of Original Homestead and Timber Culture Entries	Final Entries		Total of Final Homestead and Timber Culture Entries	Preemptions	Commutations	Total of Preemptions & Commutations
	Homestead	Timber Culture		Homestead	Timber Culture				
1881	36,999	11,554	48,553	15,077	-----	15,077	5,051	858	5,909
1882	45,331	17,157	62,488	17,174	165	17,339	9,255	7,438	16,693
1883	55,565	26,601	82,166	18,998	726	19,724	15,221	8,911	23,632
1884	55,045	28,898	83,943	21,843	717	22,560	21,286	9,623	30,909
1885	50,877	30,988	81,865	22,066	708	22,774	15,800	7,633	23,433
1886	61,638	34,996	96,634	19,356	1,036	20,392	15,712	4,866	20,578
1887	52,028	27,027	79,055	19,866	1,479	21,345	21,403	10,201	31,604
1888	46,236	24,472	70,708	22,413	984	23,397	23,151	14,057	37,208
1889	42,183	16,945	59,128	25,549	516	26,065	19,586	10,030	29,616
1890	40,244	11,935	52,179	28,080	2,896	30,976	15,243	6,065	21,308
1891	37,602	6,478	44,080	27,666	4,074	31,740	9,803	3,916	13,719
1892	55,113	268	55,381	22,822	3,878	26,700	6,603	2,914	9,517
1893	48,436	76	48,512	24,204	6,053	30,257	4,824	3,175	7,999
1894	56,632	27	56,659	20,544	7,361	27,905	1,332	2,379	3,711
1895	37,336	28	37,264	20,922	4,915	25,837	416	2,306	2,722
1896	36,598	10	36,608	20,099	4,351	24,450	345	1,875	2,190
1897	33,250	5	33,255	20,115	4,938	25,053	138	1,301	1,439
1898	44,980	1	44,981	22,281	5,691	27,972	112	2,331	2,443
1899	45,776	1	45,777	22,812	4,979	26,791	114	3,083	3,197
1900	61,270	4	61,274	25,278	3,595	28,873	120	3,953	4,073
1901	68,648	------	68,648	37,544	2,591	40,135	81	5,115	5,196
1902	98,829	------	98,829	31,618	2,029	33,647	66	7,989	8,055
1903	80,188	2	80,190	26,343	1,154	27,497	104	15,198	15,302
1904	69,175	2	69,177	23,912	456	24,368	72	15,092	15,164

[a] Every effort has been made to reconcile the inconsistent data concerning land entries in the *GLO Annual Reports*, the compilations of the public Land Commissions, and *Homesteads*, the brochure brought out by the Bureau of Land Management on the occasion of the 100th anniversary of the adoption of the homestead law. This has not always been possible. For example, the Bureau of Land Management maintains that commutations are included in their totals in *Homesteads* but detailed checks show clearly that for some of the busiest years they were not so included. I have used the data in the *Report of the Public Lands Commission* (Washington, 1905), in the hope that because it was compiled later than the annual reports they may be more accurate. Some of the commuted homesteads are obviously not included.

CHAPTER XVIII

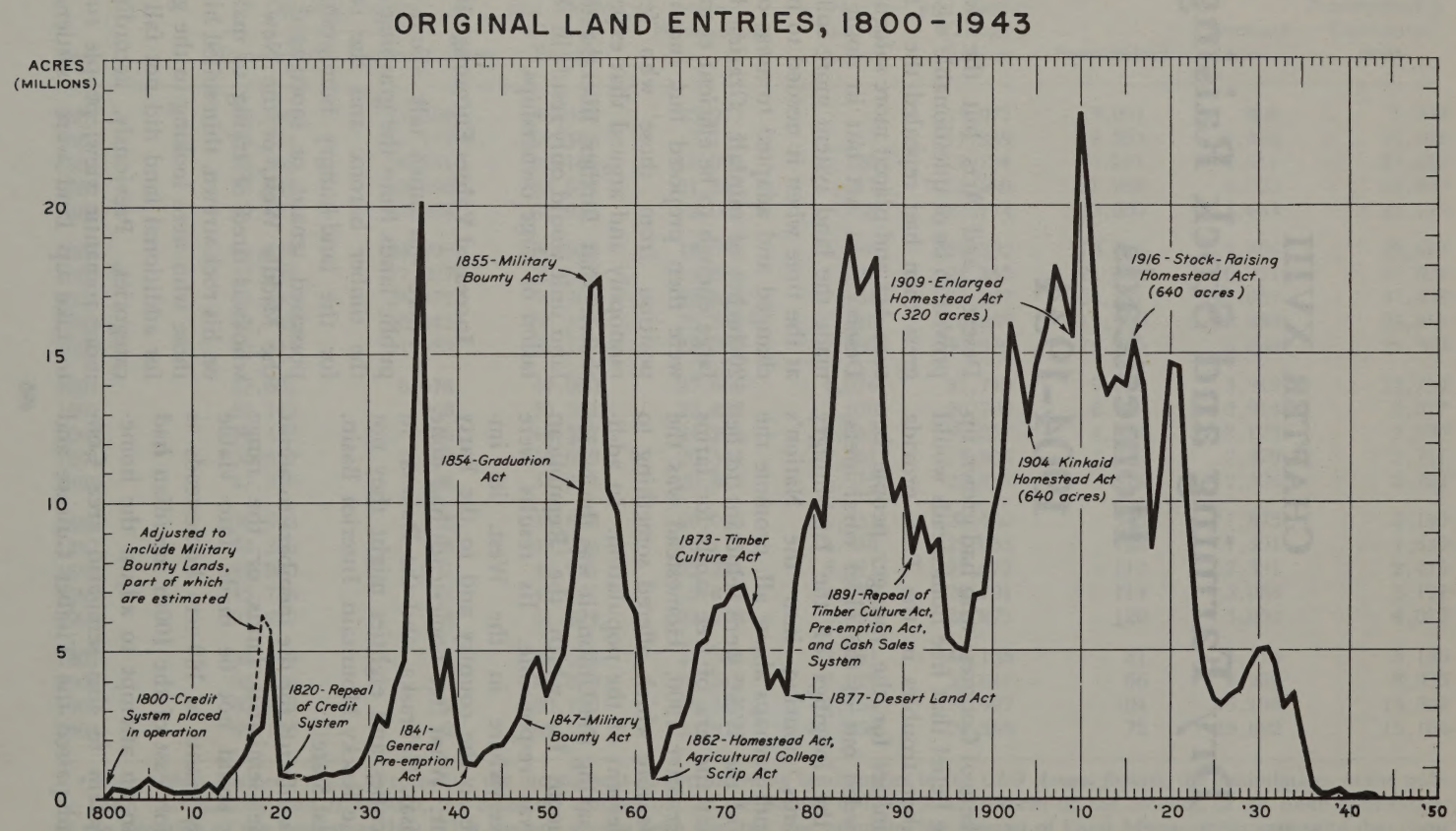
Dry Farming and Stock Raising Homesteads 1904-1934

Members of Congress who had grown up with the belief that free homesteads would solve labor troubles in the East, provide opportunities for the younger people being crowded out of the older rural areas, satisfy the longings of the land-hungry immigrants pouring into the Nation's ports, and, perhaps above all, promote the growth of the West, were reluctant to believe that the era of free lands for farms was over after 1900. Homestead was the great measure which offered something to every element of the population. In addition to saving the Union, it was the major achievement for which the Republican Party was responsible. Its results were seen everywhere in the West, its importance to the country and to the Party was clear. What free homesteads had done for Kansas, Nebraska, and the Dakotas in the seventies and eighties might they not do in the Rocky Mountain, Interior Basin, and Coast States?

It was difficult for the members to admit that the semi-arid lands or the range country could not be made into viable farms by grants of 160-acre homesteads as the region east of the 100th meridian had been. In an attempt to adjust the homestead system to this semi-arid area Congress had passed the Timber Culture and Desert Land Acts but the changes had proved to be of questionable wisdom. Congress then had repealed the Timber Culture Act and placed more safeguards in the Desert Land Act but in doing so it had made the land system more inflexible just at the time when it needed to be radically changed and adapted to areas of less than 20 inches of rainfall. Grazing homesteads large enough to be efficient economic units were then proposed but encountered opposition from those who feared land monopoly and argued that experience had shown that further liberalization of the land unit would only result in the accumulation of large ownerships.

Increased Values Encourage Investors

There was much talk about saving the public lands from the grasping speculator, the timber barons, and the cattle kings for the land-hungry immigrant, the dispossessed tenant or mortgaged farmer of the Middle West, or the New Englander who was tired of trying to make a living on his rock-strewn, thin-soiled hills. In fact those who were looking to the government for additional land did not fall into these categories. Previously, according to the more romantic view, people rushing west to take up land were "settlers," that is,



Bureau of Agricultural Economics, U.S. Department of Agriculture.

men who wanted land to make a farm to which they would dedicate their lives. After 1900, contemporary observers—and later, historians—noted that those who flocked to the land offices to enter a 640-acre Kinkaid tract, or a homestead on one of the Indian reservations being opened to settlement were for the most part "men well-to-do who are attracted by the chance of securing a valuable prize without risk." A writer in the *Outlook* said in 1909, "The day of real land hunger passed many years ago; what now exists is money hunger, for the rise in land values throughout the agricultural sections has inspired speculative ambitions and attracted every one with savings. . . ." Ethan Allen Hitchcock, Secretary of the Interior, had characterized many of those entering homesteads in Nebraska in 1902 as follows: "What is known as 'hobo filing,' the making of entries by tramps and other irresponsible persons in the interest of those desiring to obtain large quantities of public lands for grazing purposes, so it is averred, is there resorted to."[1]

It has already been seen that from the very beginning of western development many people were disposed to take advantage of the land system to accumulate wealth, not through developing the land but through speculating in it or, as a recent historian has said, "there were more people interested in unearned increment than in economic development.[2] Abuses of the land system were observed and combated on every frontier and "money hunger" was always apparent. The opportunities for speculation became much greater after the Civil War with the tremendous rush of people into the West and the rapid appreciation of land values, and probably most of those locating land were hopeful of selling some of it. But that land hunger as such was a thing of the past is not borne out by the records of farm making in the 20th century in the newer western states.

From Gallatin's day on, the settlers' protagonists—Benton, Walker, Grow, Julian, and Holman—had striven to create a land system that would make possible the success of the small man with little capital and as regularly the legislation they framed tended to open up new avenues for land engrossment. The outcries of the pro-settler element in Congress against "the rape of the public domain" and their advocacy of legislation that would reserve the public lands for homesteaders were set down as demagoguery by the more realistic western Representatives who were aware that measures designed for small farmers commonly played into the hands of large operators. In the 20th century when it seemed advisable either to lease the remaining public lands having any value for agriculture to stockmen on terms that would prevent the destructive overgrazing then practised on the open range, or to make possible grazing homestead units of 640 or 1,280 acres, the fear of engrossment and abuse of any such law was difficult to eliminate.

Some cattlemen, despairing of obtaining the legislation they wanted from Congress as long as the public lands were administered in the Department of the Interior, began to demand the transfer of the grazing lands from the General Land Office to the Department of Agriculture and its Forest Service. There, they might have the benefit of the same kind of controlled leasing regulations that Pinchot was instituting within the national forests. Leasing would mean the end of homesteading

[1] Peffer, *The Closing of the Public Domain,* p. 144, citing "The March of the Land Hungry," *Outlook,* Sept. 3, 1909, pp. 133–34; Secretary of the Interior, *Annual Report,* 1902, *H. Doc.,* 57th Cong., 2d sess., Vol. 18 (Serial No. 4457), No. 5, p. 12.

[2] Thomas LeDuc, "History and Appraisal of U.S. Land Policy to 1862," in Howard W. Ottoson (ed.), *Land Use Policy and Problems in the United States* (Lincoln, Nebr., 1963), p. 27.

and that was what the stockmen wanted. But those who still thought of the public lands as providing an opportunity for the landless protested so vigorously that the proposal was dropped.[3]

The Kinkaid Act

President Roosevelt focused attention upon the inadequacy of the 160-acre homestead law for the semi-arid lands in his State of the Union message to Congress in 1902. A year earlier the Congressman from northwestern Nebraska had introduced a bill to provide for 1,280-acre homesteads in the semi-arid lands but obtained little support. In 1904, his successor, Moses P. Kinkaid, introduced a similar measure and was successful in securing a favorable report from the House Committee on Public Lands after it had reduced the size of the unit to 640 acres. Discussion in the House centered on the question of whether the measure would be subsequently extended to the remaining public lands. Little attention was devoted to the economic feasibility of 640-acre grazing units in the Sands Hills region where it was primarily to apply. Both the House and Senate passed it without division after clarifying amendments had been adopted and the two versions reconciled.

The Kinkaid Act provided that in the western two-thirds of Nebraska, homestead units of 640 acres would be available to settlers who would live on them for 5 years and would make improvements worth $1.25 for each acre. Land suitable for irrigation along the Platte and other streams was to be excluded from the provisions of the act. Persons who had already homesteaded on 160 acres or less were privileged to make another entry to bring their holdings to the full section. No commutation of entries was to be allowed. In his supporting speech Kinkaid declared that the settlers had already classified the lands of western Nebraska by their action in locating only upon the hay lands close to the streams and rejecting the sand hills where water was not available and rainfall was insufficient to produce anything but a very meager stand of forage.[4]

Knowing members of Congress might well have inquired how abuse of the Kinkaid Act could be prevented in view of the widespread evidence that efforts to prevent misuse of the original Homestead Act and its commutation feature had met with little success. Rich and influential cattlemen of Nebraska immediately took advantage of the new law, and to no one's surprise for, as Marie Sandoz has said, it was intended as a cattleman's law. Speaking of the opening of the Sand Hills to the enlarged entry Miss Sandoz writes:

> The day of the opening long queues of homeseekers waited for hours, only to find that even the sad choice of land that was free had been filed earlier in the day. There was talk of cattleman agents who made up baskets full of filing papers beforehand and ran them through the first thing. One woman was said to have filed on forty sections, under forty names, at five dollars a shot. The land was covered by filings that would never turn into farms.[5]

Times were somewhat changed, however, and the cattlemen were not to have their way entirely. Their fences still enclosed thousands of acres of land now intended for small grazing homesteads, and their hands still tried to intimidate possible settlers from taking up land, and even resorted to murder on occasion. In the past, courts, Congressmen, and newspapers, even Presidents, except for Cleveland, had favored the large ranchers with their illegal

[3] Peffer, *op. cit.*, pp. 72 ff.

[4] *Cong. Record*, 58th Cong., 2d sess., April 18, 1904, pp. 5006–5009; 33 Stat., Part 1, p. 547; Arthur R. Reynolds, "The Kinkaid Act and Its Effects on Western Nebraska," *Agricultural History*, XXIII (January 1949), 20–29.

[5] Marie Sandoz, *Old Jules* (Boston, 1935), pp. 269–70.

fences, as Addison Sheldon, T. A. Larson, and Marie Sandoz have shown. But this time a President who was familiar with the land conflict between cattlemen and settlers refused to let the guilty off with a slight penalty.[6] After a series of unsuccessful maneuvers to compel the removal of the illegal fences a number of indictments of ranchers were secured, the cases were prepared with the utmost care, but when the jury convicted, the judge let the guilty parties off with a small fine and 6 hours in jail. Such disdain for the law angered Theodore Roosevelt. He had the district attorney and Federal marshal responsible for flouting the law removed and was reported as saying that he would remove the judge if he could. Investigating agents soon reported that the ranchers had hired 94 residents of an Old Soldiers Home and soldiers' widows to make entries under the Kinkaid Act for which they were promised from $150 to $1,000 after they had secured title. Upon being found guilty, a millionaire cattleman, Bartlett Richards, was fined and sentenced to a year in jail. The trial, conviction and sentencing of Richards and his associates was the most spectacular success the government achieved in its efforts to prevent fraudulent use of the land laws and did much to restore faith in the courts and public officials in Nebraska, a state where it had long been notorious that the influential cattlemen always seemed to win their disputes with settlers. The same vigorous

[6] Addison E. Sheldon, *Land Systems and Land Policies in Nebraska* (Lincoln, Nebr., 1936), pp. 174 ff.

HOMESTEAD ENTRIES IN NEBRASKA[a]

	Unappropriated and Unreserved Lands	Original Entries		Final Entries		Commuted Entries	
		Number	Acres	Number	Acres	Number	Acres
1903	8,848,906	3,345	491,706	817	119,993	540	75,782
1904	7,834,763	4,726	1,310,712	818	120,783	330	35,944
1905	4,481,958	10,736	4,788,352	1,045	147,956	162	18,540
1906	4,150,301	4,079	1,719,857	966	139,562	112	12,777
1907	3,543,161	4,179	1,773,143	990	161,146	66	8,089
1908	3,074,658	4,022	1,740,406	1,061	183,938	78	8,638
1909	2,341,686	4,109	1,913,713	815	163,739	56	6,766
1910	1,879,486	3,653	1,569,173	2,559	960,735	51	5,624
1911	1,336,499	3,033	1,418,640	3,152	1,332,060	66	8,539
1912	832,750	2,672	1,283,651	2,257	1,039,054	70	8,517
1913	405,469	2,253	996,895	5,134	2,476,575	44	4,865
1914	270,162	2,396	1,035,411	3,059	1,393,136	43	5,242
1915	192,358	1,120	371,949	2,217	1,081,093	35	3,671
1916	146,256	827	219,504	2,275	1,079,043	27	2,933
1917	130,016	562	788,086	1,730	791,546	30	3,459
1918	108,556	347	66,043	1,043	417,889	28	3,194
1919	92,826	314	47,614	613	208,776	21	1,946

[a] The statistics of original and commuted entries are compiled from the *Annual Reports of the Secretary of the Interior;* those for final entries are from *Homesteads*, a small brochure brought out by the Bureau of Land Management in connection with the celebration of the centennial of the adoption of the Homestead Act. Its statistics vary considerably from those of final entries in the *Annual Reports*.

The table indicates that the number of relinquishments and cancellations must have been large.

prosecution of stockmen was not undertaken in Wyoming where powerful politicians were involved.[7]

Evidence of the misuse of the public land laws to accumulate large ownerships and to profit from resales became so convincing that Roosevelt did what Sparks had done earlier. He had special agents examine the *bona fides* of every application for a patent to determine whether the claimant had fulfilled the terms of the law. This kind of a critical examination was not well received in the West and contributed to the resentment that was piling up in that section against what it regarded as the misunderstanding of western problems by a government agency staffed with men from other sections.[8]

Between 1904 and 1920 the remainder of the public lands open to homesteading in Nebraska were taken up, mostly under the Kinkaid Act. Since the Land Office did not segregate the entries under the Kinkaid Act from those made under the original Act of 1862 we cannot determine the success or failure of entries under the 640-acre act without the most minute investigation of the manuscript records. The statistics show a big increase in the acreage entered in 1904 and an even larger one in 1905 when the number of entries tripled over 1903, being exceeded only by the entries in North Dakota. Since commutation was not allowed for Kinkaid entries, the number of commuted homesteads declined sharply in Nebraska in contrast to other states where only the 160-acre law was in operation and commutation was proceeding at a relatively high rate. Between 1904 and 1926 there were 50,413 original entries in Nebraska and 31,103 final entries which suggests that the Kinkaid entries were carried to patent to a somewhat greater extent than the 160-acre homesteads elsewhere.

If the purpose of the Kinkaid Act was to hasten the closing of the public lands in Nebraska and to get them into the hands of private owners—the objective of many people in the western states—it came near to achieving this result, as the table shows. But if the purpose of the law was to make possible the establishment of small stock raising homesteads of 640 acres on which the better land would be cropped, the record of success was not so clear. Kinkaid homesteaders, lacking the capital for stock ranching, had to turn to grain farming and soon met with disaster; "the crops blew out, and little was harvested" was a story to be repeated endless times after the adoption of the Stock Raising Homestead Act.[9]

John Clay, who saw the initiation of the Kinkaid Act and who was one of the most knowing of cattlemen, said the 640-acre homesteads generally fell into the hands of adjoining cattlemen. "Those Sandhills are totally unfitted for agriculture. . . ." Clay called the act "another instance of stupidity in land matters."

A Nebraska writer told about the "great influx of homesteaders" to take up lands under the Kinkaid Act who later sold their holdings for $1,000 to $5,000 a homestead. "Thus the Kinkaid homestead law resulted in great good to western Nebraska, and the larger ranches gradually increased their holdings in an honest and legitimate manner, buying up good titles at fair prices and in this way extending their ranches."[10]

[7] Arthur R. Reynolds, "Land Frauds and Illegal Fencing in Western Nebraska," *Agricultural History,* XXIII (July 1949), 173–78; Sheldon, *Land Systems and Land Policies in Nebraska,* 197 n.; T. A. Larson, *History of Wyoming* (Lincoln, 1965), pp. 380–85.

[8] Peffer, *op. cit.,* p. 148.

[9] Eleanor H. Hinman, "History of Farm Land Prices in Eleven Nebraska Counties, 1873–1933," Research Bulletin 72, Experiment Station, College of Agriculture, University of Nebraska (Lincoln, 1934), p. 22.

[10] Bayard H. Paine, "Decisions Which Have Changed Nebraska History," *Nebraska History Magazine,* XVI (October 1935), 208.

In 1900 there were 1,728 farms and ranches of at least 1,000 acres in the counties in which the Kinkaid Act was to apply. In the more western counties the percentage of farms in excess of 1,000 acres ranged from 8 in Scotts Bluff township to 31 in Grant, which may be taken as a clear indication of the widespread use of dummy entrymen and the marked tendency to sell tracts as soon as title was acquired. These same counties by 1930 had 5,068 farms in excess of 1,000 acres and 502 in excess of 5,000 acres.[11] It took many Kinkaid homesteads to make a ranch of 5,000 to 15,000 acres or the 11,893-acre average of 78 farms in Grant County in 1940. We may deduce from the Census of 1960 that it took 4,256 Kinkaid homesteads to make 456 farms or nine each to make a viable ranch that survived until then.[12]

Professor Harold Hedges of the Department of Rural Economics in the Nebraska College of Agriculture summed up in 1928 the results of the Kinkaid Act for the Sand Hills country:

> Even the increased size of homesteads was not sufficient to insure permanent settlement. Many abandoned their claims before proving up on them. Others were glad to sell their holdings after they realized that crop-farming on the Sand Hill land was out of the question except in limited areas.
>
> Since the 'kinkaider' days individual holdings of land have been enlarged by purchase and lease and attempts at cropping operations have been abandoned. Fenced pastures have replaced the open range and private control of the land is the rule. The final result is a cattle industry established on a much sounder basis than in the days of free grass.

Hedges analyzed the operations of 47 Sand Hills ranches mostly in Cherry County. They averaged 6,681 acres, had herds of from 111 to 1,843 yearling cattle and represented an investment of $16,815 to $332,073.[13]

Cattlemen Begin to Fear Range Loss

As cattlemen watched the progress of homesteading in the fine rangelands they had once enjoyed, and had in some instances illegally fenced, some of them came reluctantly to the realization that only through leasing with legalized fencing could they gain immunity from the inroads of the homesteaders and some protection against abuse of the range. A few scattered and ineffective efforts were made to bring about a leasing policy in the early part of the century. Another and more strongly supported proposal was to extend the 640-acre Homestead Act of 1904 to the non-irrigable lands of South Dakota and Montana. Such a measure, overwhelmingly endorsed by the Legislature of South Dakota, though opposed by the House of Representatives of Montana and the Commissioner of the Land Office, won committee approval in both Houses of Congress and actually passed the lower House in 1905. However, members of the Senate preferred to wait upon the results of the Kinkaid Act in Nebraska. All that was apparent at the time was that a motley crew of people were drawn to the land offices of western Nebraska to take ad-

[11] Grant County farms and ranches in the Sand Hills country averaged 5,738 acres in 1930. Sheldon has compiled a number of useful tables showing the number of cattle, the acreage of farms, and the number of farms in excess of 1,000 and 5,000 acres in the western counties of Nebraska, *Land Systems and Land Policies in Nebraska,* pp. 162, 165, 186.

[12] Moses Kinkaid testified before the House Committee on Public Lands in 1914 that his act had worked as well in western Nebraska as the 160-acre act worked in admittedly good areas. The committee wanted him to testify that a large proportion of the settlers had stuck to the land but he was cagy and evaded a direct answer. House Committee on Public Lands, "Grazing Homesteads and the Regulation of Grazing on the Public Lands," 1914, pp. 334–47.

[13] Harold Hedges, *Economic Aspects of the Cattle Industry of the Nebraska Sand Hills,* Bulletin 231, Experiment Station, College of Agriculture, The University of Nebraska (December 1928), pp. 4, 10.

Unreserved and Unappropriated Lands, 1905[a]

State or Territory	Surveyed	Unsurveyed	Total
Alabama	183,480	----------	183,480
Arizona	12,440,032	34,642,289	47,082,321
Arkansas	2,109,464	----------	2,109,464
California	26,175,146	6,981,731	33,156,877
Colorado	27,717,469	2,393,117	30,110,586
Florida	873,482	247,691	1,121,173
Idaho	10,118,854	23,366,535	33,485,389
Kansas	942,483	----------	942,483
Louisiana	91,372	65,018	156,390
Michigan	323,947	----------	323,947
Minnesota	2,063,430	759,408	2,822,838
Mississippi	60,440	----------	60,440
Missouri	149,039	----------	149,039
Montana	19,241,294	36,507,106	55,748,400
Nebraska	4,481,958	----------	4,481,958
Nevada	30,993,494	30,233,280	61,226,774
New Mexico	37,599,949	14,495,363	52,095,312
North Dakota	5,729,015	1,321,291	7,050,306
Oklahoma	1,983,249	----------	1,983,249
South Dakota	9,625,282	306,831	9,932,113
Utah	11,925,111	26,922,230	38,847,341
Washington	3,982,442	4,584,121	8,566,563
Wisconsin	51,149	----------	51,149
Wyoming	34,877,894	2,745,535	37,623,329
Totals	258,151,044	191,347,263	449,498,307

[a] Department of the Interior, *Annual Report*, *H. Doc.*, 59th Cong., 1st sess. (Serial No. 4958), Vol. 18, p. 383.

vantage of the government's bounty,[14] and judging by the experience in the past decade or two, it was to be feared that many of them were concerned with getting land for sale, not for farming.

Representatives of other western states, witnessing the rush for homesteads in Nebraska in 1905 and listening to Moses P. Kinkaid assure them that his act was resulting in increased immigration to Nebraska, the growth of communities, and an increase in taxable property and social facilities were lulled into believing that such growth was to be attributed to the breakup of the range and that the new settlers were doing well on their larger tracts. Pressure was building up for the application of a more liberal homestead unit to other parts of the West, a pressure that was supported by practically all economic interests except many livestock men. But they were no longer the all-powerful group they once had been. The West was changing. Greater concern was being expressed for the immigrant farmer who used the land more intensively, came to own it and to pay taxes, provided business for the grain elevators, the local merchants, the railroads, the real estate people.

In 1905 there still remained in government hands a notable fragment of the once huge 1,446,436,160 acres of public domain (exclusive of Alaska). In this fragment were 258,151,044 acres of surveyed and 191,347,263 acres of unsurveyed land which was both unappropriated and unreserved, or a total of 449,498,307 acres. Less than 1

[14] Mary Wilma M. Hargraves, *Dry Farming in the Northern Great Plains, 1900–1925* (Cambridge, Mass., 1957), pp. 343–46; Peffer, *op. cit.*, pp. 140 ff.

percent of this land was in the humid states. Some states or parts of states which had been open to settlement for as much as 30 to 40 years still had less than 20 percent of their land in private ownership. Although the number of people filing for homesteads was increasing, the growth of population in the semi-arid states was unsatisfactory to leaders in business, agriculture, and politics.

Advent of Dry Farming

In the semi-arid West the state governments and their colleges of agriculture, immigration bureaus, legislatures, railroads, and real estate agents, all were deeply interested in developing these states more intensively than the livestock industry had. All were trying to find the best method of exploiting the public lands that would result in accelerated immigration and make for more effective use of the land. The alternatives were dry farming in units of less than 320 acres, which was acquiring great popularity with land locaters, real estate agents, and railroads, or "a mixed, farming-grazing organization" which was endorsed by agricultural scientists in the United States Department of Agriculture. If the second choice won out the question left was whether "the system should be that of the farmer raising stock as an adjunct to cropping operations or that of the rancher growing feed for stock. . . ."[15]

Dry farming techniques, as expounded by Hardy Webster Campbell, called for a relatively intensive form of agriculture that would provide opportunities for many thousands of farm families. Semi-arid lands with rainfall insufficient for normal cropping could produce grain, grass, or other crops if the moisture in the soil was carefully preserved in fallow years by harrowing to keep down weeds and to make the top soil into a dust mulch. Other essential practices were deep plowing in the fall and firmly packing the seeds sown by drills. Shrewdly contrived educational or propaganda work by the colonization and land departments of the railroads, well supported by others interested in the real estate and development business, publicized dry farming experiments which through sheer good luck and able management had had remarkable success, though perhaps aided by somewhat more than normal rainfall.

There was much agitation and discussion. Some stockmen advocated the leasing of rangelands not suitable for irrigation; others favored enlarging the 640-acre Kinkaid homesteads. Aligned in opposition were the advocates of an enlarged 320-acre homestead unit that might serve the interests of dry farming. Fortune and their greater numbers favored the dry farming advocates. They obtained the Enlarged Homestead Act of 1909 which authorized 320 acre-homesteads on nonirrigable, nonmineral land having no merchantable timber in Oregon, Washington, Arizona, New Mexico, Colorado, Utah, Montana, Wyoming, and Nevada. Not wishing to be regarded as semi-arid states, California, Idaho, Kansas, and North and South Dakota had asked to be left out of the measure. Five years of residence on the land with continuous cultivation of other than native grasses was required and there was to be no commutation. Because in Utah much land had no known source of domestic water but was still useful for dry farming, the statute provided that on as much as 2 million acres in that state residence on the land would not be required during the 5 years.

Such classification as was required to segregate lands to be open to homesteading under the Act of 1909 was to be done by the Department of the Interior through the Geological Survey. The measure dis-

[15] Hargreaves, *Dry Farming in the Northern Great Plains* pp. 329 ff.

regarded the work being done in the Department of Agriculture where an Office of Dry Land Agriculture had been set up in 1906. This office had established 11 stations in the Great Plains to study and experiment in a practical way with the best methods of tillage, rotation and crop sequence, and drought resistant grasses and grains. One of its major achievements had been its earlier introduction of durum wheat which was adapted to dry land farming. The Bureau of Plant Industry, under which the Office of Dry Land Agriculture functioned, in 1906 had issued a timely warning that the recent cycle of somewhat wetter years did not mean a permanent change in the climate of the higher plains and that the dryer years would return as they had in the past, optimistic land agents to the contrary notwithstanding. The Bureau also warned that attempts to colonize large numbers of people who were only acquainted with humid agriculture east of the 100th meridian—and they constituted most of the immigrants going west —would surely lead to disaster. Designation of the land that might prove suitable for dry land agriculture might better have been the responsibility of the Department to which Congress had previously appropriated considerable funds for studies that surely would have enabled it to avoid some of the errors made under the Act of 1909.[16]

The Enlarged Homestead Act

Homestead entries on the public lands offer clear evidence of the tremendous influence of the Homestead Act on the settlement of the West. The number of entries rose steadily from 8,223 in 1863 to 39,768 in 1871, a total which was not to be exceeded until 1879. The Panic of 1873, the swift letdown in railroad building, in immigration, and in the flow of capital west caused entries to decline to 18,675 in 1877. Then the tide turned and entries climbed steadily with some ups and downs until 1881 when they reached 61,638. Then followed droughts, terrible winters in the high plains, and the Panic of 1893. Entries fell to 37,602 in 1891 and 33,250 in 1897. As economic conditions improved, entries moved up to 98,829 for 14,033,245 acres in 1902 and to the second highest peak in 1910, the first year of the Enlarged Homestead Act, when 98,598 entries were filed, for 18,326,715 acres.

In this first year of the operation of the Enlarged Homestead Act, 30,331 entries under both Homestead Acts were filed in Montana, 20,955 in Colorado, and 13,541 in New Mexico. Three states which were not initially included in the Enlarged Act also had large entries: South Dakota, 23,918, North Dakota 13,123, and Idaho 9,287. The attractions of the larger unit induced Idaho and California in 1910, North Dakota in 1912, and South Dakota in 1915 to ask to be included among the states enjoying the larger bounty.[17]

Success of settlers on the 320-acre dry farming tracts was spotty. In Wyoming the rush of settlers to take up the enlarged homesteads was followed by drought years that produced a contraction of land in cultivation and in 1911 and 1912 a sharp decline in the number of homestead entries, but they regained high levels in succeeding years. So anxious was Wyoming to attract population and to develop what in that state would be counted as small farms that it created a Board of Immigration in 1911 and voted $40,000 to bring to the attention of people elsewhere the remarkable possibilities the state offered.

[16] Department of Agriculture, *Yearbook, 1906,* p. 46; *1907,* pp. 190, 450–68; *1908,* p. 65; and *1912,* pp. 124, 213.

[17] Acts of Feb. 19, 1909, June 17, 1910, June 13, 1912, March 3 and 4, 1915, 35 Stat., Part 1, p. 639; 36 Stat., Part 1, p. 532; 37 Stat., Part 1, p. 132; 38 Stat., Part 1, pp. 953, 1163.

In one of its blurbs appeared the following: "There is absolutely no question as to the fertility of the soil in Wyoming. It is rich, and will produce enormous yields as compared with farms of the Middle West."[18] The meager results of homesteading in Wyoming may be seen in the number of new farms and ranches the census recorded. In 1900 the state had 6,095 farms and ranches and in 1910 before the Enlarged Homestead Act could have greatly changed the picture, there were 10,987. During the next 24 years 88,687 original homestead entries were filed of which slightly less than half went to patent. Yet the number of farms and ranches increased only to 15,748 in 1920, to 16,011 in 1930 and declined to 15,018 in 1940. From 88,687 original homesteads there came no more than 6,000 farms which is fair evidence that it took 14 original homesteads or seven final homesteads to make a farm or ranch in this once great cattlemen's commonwealth.[19]

Colorado's experience likewise offers an instructive commentary on the operation of the Enlarged Homestead Act. In a 318-page book, *Free Homestead Lands of Colorado Described,* published in 1915 by a someone who must have been closely identified with the real estate and land locator group, the Enlarged Homestead Act was described as providing many million acres of vacant public land "usually good, fertile and productive." The land was admittedly second choice since the better lands had already been taken yet it "would be considered valuable in any country, a large portion of it being suitable for cultivation." Readers were told that the easiest money a farmer could make was out of the increase in the value of his land. "Settlers are growing wealthy" is the caption of one section which named eight persons who, after 5 to 8 years of work, were worth from $5,000 to $10,000. "Farmers are almost universally successful." The most dubious statement in the book is that "Ten acres of average Colorado land will support one cow the year round. On a 320 acre homestead, the settler can graze twenty-five head of stock, and have sufficient land for a kitchen garden and plenty to cultivate in fodder crops for the winter feeding." Then township by township were given capsule descriptions of the land which was said to be worth $5 to $10 an acre. This type of publicity brought to Colorado 77,480 people who filed homestead entries in the 10 years from 1910 through 1919; the number of farms increased in the decade by only 13,764 or 29 percent and the number of acres in farms increased by 80 percent. As had been predicted, the Enlarged Homestead Act and the Stock Raising Homestead Act were enabling or compelling ranchers to buy these small and uneconomic holdings.[20]

John Clay, historian of the range cattle industry, said in 1921: "the retreat of the dry farmer and 640 acre homesteader has begun. . . . A few of the thrifty will stay, and will acquire some cheap land as it is foreclosed or sold for taxes." The statistics suggest that the retreat had not been delayed quite as long as Clay's statement indicates.[21]

[18] Larson, *History of Wyoming,* pp. 362–63.

[19] The total number of final homestead entries in Wyoming from 1871 to 1961 is 67,315. It must be remembered that the Union Pacific Railroad and the State of Wyoming together received 10 million acres in the state which they were anxious to sell and have developed. It would be useful to know how many of the 300,000 acres the Resettlement Administration purchased in five Wyoming counties and larger amounts in other Plains and Mountain states had been homesteaded under the 320- and 640-acre acts. *Ibid.,* p. 445.

[20] George S. Clason, *Free Homestead Lands of Colorado Described* (Denver, 1915), pp. 5 ff., 28. The data of original homesteads was compiled from the *GLO Annual Reports* and the census data is from the agricultural volumes of the Census for 1910 and 1920.

[21] Larson, *op. cit.,* p. 416.

The Department of the Interior, which had not been imbued with some of the newer conservationist views that had influenced the Forest Service of the Department of Agriculture, was responsible for designating such public lands as were not suitable for irrigation for entry under the Enlarged Homestead Act. The Department's authority was minimal, for Congress had not intended to do more than exclude from entry under the act lands for which there might be a better and higher use. Interior officials welcomed the act and seemed to have little doubt that it was certain to play a major role in furthering the agricultural development of the High Plains country. As late as 1915 Franklin K. Lane was saying, "The most valuable discovery made in recent years as affecting the public domain is that the semi arid regions may become abundantly productive under dry-farming methods."[22] That the discovery was not so recent and that the enlarged homesteads in the range country were showing signs of failure did not appear to be recognized by the Secretary.

Possibly because he was aware that the Enlarged Homestead Act was being criticized for contributing to the breakup of the public range and thereby harming the livestock industry, Clay Tallman, Commissioner of the Land Office, began collecting data in 1915 concerning the amount of acreage in cultivation and the value of the improvements on 10 randomly selected homesteads reaching final entry in each of 95 land offices. He found that on the 950 homesteads selected—most would be 160-acre homesteads with a possible maximum of sixty 640-acre homesteads and a few 320's—that the average acreage in cultivation was 27 acres and the value of improvements, $790. He concluded this substantial development was "a fair demonstration of the general good faith of claimants. . . ." A year later he repeated the same data in his report and held that but one deduction could be drawn: "the general good faith of the small homesteader and his bona fide intention of making a permanent home for himself on the public domain." That Tallman's data was only from successful homesteaders who had reached the final entry stage and that he gave no attention to sales after the final entry makes his generalization of little meaning. He went on to comment on the successful operation of the Enlarged Homestead Act, though he did concede that "here and there is encountered an expression of opinion that the law has been made use of for speculative ends, but this is the exception." Similarly, Tallman assembled statistics to show how favorably the Kinkaid Act was working. On the basis of all this analysis it was possible for him subsequently to lend his support to the Stock Raising Homestead Act.[23]

Three studies of Stanley County, South Dakota, and Williams County, North Dakota of 1908 and an account of a trip in western North Dakota in 1916 brought out evidence that quite contravenes Tallman: In Stanley County all good land had been homesteaded but a large number of settlers had moved away; nearly all Williams County had been homesteaded but only 3 percent was plowed; in western North Dakota the homesteaders were not seeking a home but a speculation in land.[24]

In response to many requests for information as to where suitable land might be acquired for farming the Department of Agriculture brought out a pamphlet offering descriptions of the different parts of the country such as the cutover area of the Lake States, the Pacific Northwest, drainable and irrigable lands, and the semi-arid lands where dry farming was being tried with the aid of the 320-acre Homestead

[22] Secretary of the Interior, *Annual Report, 1915,* p. 7.

[23] Secretary of the Interior, *Annual Report, 1915,* p. 281; and *1916,* pp. 156–58.

[24] Hargreaves, *Dry Farming,* pp. 380–81.

Act. It warned that experience had shown that 320-acre units of semi-arid land had proved generally inadequate "except under the most favorable circumstances and expert management." Many hundreds of dry land homesteads were reported to have been abandoned; in one block of land the Land Classification Board found that 247 out of 250 claims had been abandoned.[25]

In 1912 Congress reduced from 5 to 3 the number of years homesteaders had to be on their claims between actual settlement and final entry with proof of having completed requirements. The homesteader was allowed to be away from his land 5 months in each of the 3 years, presumably in the winter months when he might take a job elsewhere. The change was occasioned by the growing alarm in the West at the emigration of many Americans to the Canadian prairie provinces where much better land than homesteaders could acquire in the United States was available as free 160-acre homesteads at the conclusion of 3 years of residence.[26] William E. Borah, a doughty champion of western rights, presented the issue in the Senate. He declared that 125,000 Americans had left the United States for Canada in 1911 and anticipated that between 130,000 and 140,000 would leave in 1912. For a country which had long been on the receiving end of immigation, and still was, for that matter, these were startling statistics and though Borah was later corrected by Gallinger who showed that the emigration for 1911 was only 90,768, they made a profound impression upon western leaders who felt the loss the most seriously.

Borah in the Senate and Edward Taylor in the House, enlarging upon the concern of western members at this loss of population, criticizied the "spying" of investigating agents trying to determine whether homestead applications were *bona fide* or were made for other parties, the long delay in delivering patents after the settler had fulfilled all obligations, the need to employ attorneys to defend their claims, the officious and arbitrary conduct of Land Office and Forest Service officers and the many ranger sites that one Congressman thought should have been reserved for homestead applicants. An Oregon Congressman pointed out that the Department of the Interior was asking for ever increasing appropriations for agents to investigate claims, or as he put it, "to harass the poor homesteaders," while the number of land entries was declining. Before the complainants were through a listener in the Congress would have thought the officers had no friends or defenders. Canada's land policy was held up as more generous and less arbitrary; titles were said to be delivered quickly when requirements were completed. Yet, when the two homestead measures were compared in tabular form it appeared there was very little difference except that Canada required 3 years of residence and allowed the applicant to be away 6 month in each of his 3 years. The unrestrained attack ended with Congress adopting virtually the same provisions, allowing a total of 5 months' absence each of the 3 years.

In the discussion, members of Congress conceded that the lands open to homestead in the United States were semi-arid, in contrast to the more humid lands in Canada,

[25] "Farm Lands Available for Settlement," *Farmers' Bulletin No. 1271,* U.S. Department of Agriculture (1922), p. 28. One would like to know the reaction in the dry land area to this 1922 bulletin.

[26] Chester Martin in " 'Dominions Lands' Policy," which is Part II of Arthur S. Morton and Martin, *History of Prairie Settlement* (W. A. Machintoch and W. L. G. Jones [eds.], *Canadian Frontiers of Settlement,* Vol. II [Toronto, 1938]), shows the similarities and differences in the land systems of Canada and the United States, the borrowing of and profiting from American experience. Most of the abuses of the American homestead system resulting in extensive speculator-owned land (in mortmain, the author calls it) developed in as aggravated form in the Canadian prairie provinces. See esp. pp. 381 ff., and 409.

but there was no indication in the speeches that homesteading in the West was accompanied by many failures. The West was not ready to concede that its lands did not offer a real bounty to settlers but instead turned on the government for hounding "poor" applicants trying to get title.[27] Also, it preferred to ignore the thousands of cases of fraudulent entries—50,000 of which were either pending or received in 1912. In his typically sardonic manner, Walter Webb, the historian of *The Great Plains,* had this to say about the Act of 1912:[28]

> This act seemed to grow out of the realization that on the remaining land the average family could not hold out for five years. The point of starvation was reached short of that, and consequently it would be humane to shorten the required time of residence to three years.

Early Optimism

The Enlarged Homestead Act was in operation but a short time before efforts were made to provide for stock raising homesteads of 640, 1,280, or even 2,560 acres. Leadership in the move was taken by Frank W. Mondell of Wyoming, the state which was to show the most sustained opposition to leasing. Mondell favored a unit of at least 1,280 acres but was willing to agree to the 640-acre unit, though he doubted that it was sufficiently large to make viable grazing homesteads. In this period of ferment Will C. Barnes, a former cattle rancher in Arizona and in 1913 Inspector of Grazing in the Forest Service, brought out his *Western Grazing Grounds and Forest Ranges. A History of the Live-Stock Industry as Conducted on the Open Ranges of the Arid West, with Particular Reference to the Use Now Being made of the Ranges in the National Forests.*[29]

Barnes had been influenced by Pinchot, was a supporter of the grazing policies of the Forest Service, but kept his feet on the ground and was one of the most knowing men in livestock management and grazing problems. He was frequently to be quoted in the debates leading to the adoption of the Act of 1916 and in discussions thereafter respecting its usefulness. He tells of two successive waves of settlers coming into the Great Plains in Kansas and Nebraska, first seeking out the valley land, then moving up into the benches back from the bottom land and having fair crops in their first years. Then drought struck; settlers with meager resources had to abandon their improvements. In the early eighties there was another cycle of years with more rainfall when the second wave of settlers advanced into the Plains. They "were better prepared to meet the vicissitudes of desert farming and had sufficient means to meet a few bad years," they held out longer than the earlier group had been able to do. The third wave of settlers came with the adoption of the Act of 1909 which brought in the new type of settler sometimes called the "kafer corn-er." Again, favorable weather conditions enabled these homesteaders to flourish for a time, the desert was made to bloom with new and exotic grasses and grains introduced by the experts of the Department of Agriculture from the arid parts of other continents. Barnes' conclusion is that there had been no general failure of homesteaders on the 320-acre units. "Here and there failures have occurred, due to spotted rainfall, and a total disregard of the true scientific principles underlying the dry-farming theory. Generally speaking, however, all over this dry-farming region the principle has worked out in a highly successful manner, and unquestionably the dry farmer is here to stay, and must be reckoned with in the

[27] *Cong. Record,* 62d Cong., 2d sess., pp. 1011–26, 3685–91.

[28] Walter P. Webb, *The Great Plains* (Boston, 1931), p. 423.

[29] Chicago, 1913.

future as an additional producer of stock and farm products."[30]

Barnes' view of the relative success of dry farming in the arid lands of the West in 1913 is here summarized because his announced position strengthened the support for larger homestead units. He and many others were later to change their minds.

The Need for Classification

Keen critics of the public land system were well aware, as Major Powell and the Public Land Commission had been in 1879, that classification of the public lands was essential if the country was to avoid the kind of errors it had made in the past. Valuable mineral and forest lands had been permitted to pass to private ownership as free grants, donations to railroads or as cash sales at $1.25 an acre, and individuals had been enabled to control great areas of rangeland by making entries along streams or at water holes. Provisions in the Kinkaid and Enlarged Homestead Acts limiting entries under them to nonirrigable land implied a form of classification, as had other reservation and withdrawal actions in the past, but with no funds to carry out thorough classification of the land these restrictions were not significant. Further need of classification came with the large withdrawals for forest conservation, watershed control, power sites, and irrigation that were made by Roosevelt's orders. President Taft had some doubts as to legality of these withdrawals, particularly in the light of the strong opposition they had stirred up in the West. In a special message to Congress on January 14, 1910, he recommended the adoption of a measure to provide for the classification of the remaining public lands "according to their principal value or use." In the same message he urged Congress "to validate the withdrawals . . . and to authorize the Secretary of the Interior temporarily to withdraw lands pending submission to the Congress of recommendations as to legislation. . . ." Taft's uncertainty as to the exercise of Executive power, which the courts had sustained, is in contrast to Roosevelt's boldness, the more so as the measure that emerged from Congress seemed to weaken the right of withdrawing public lands.[31] Taft's method, however, won congressional approval, whereas Roosevelt's withdrawals had raised a storm of criticism among his own party followers in the West.

The Withdrawal Act of June 25, 1910, authorized withdrawals of public lands from any form of entry for "power sites, irrigation, classification of lands or other public purposes" and stipulated that all such withdrawals should remain in force until revoked by an act of Congress. It authorized no appropriations, however, to carry out classification of the lands and provided no funds for the development or use of the withdrawn lands. As Miss Peffer says, it was a reservation, not a conservation measure.[32]

Further liberalization of the settlement laws followed, making final entries under the Desert Land Act easier, permitting settlers to gain ownership of both desert land and enlarged homestead tracts totaling 480 acres, reducing the cultivation and residence requirement, and allowing 5 months continuous absence for each of the 3 years. These all showed how far Congress and the Land Office were prepared to go in trying to settle land of increasingly doubtful agriculture value, while competing with Canada, which was offering homesteads on better land.[33]

It is significant that it was the Geological Survey, in the Department of the Interior, not the Land Office, which was pressing for

[30] Barnes, *op. cit.*, pp. 87–90.

[31] Peffer, *op. cit.*, pp. 115–19.

[32] 36 Stat., Part 1, p. 847; Peffer, *op. cit.*, p. 118.

[33] Hargreaves, *op. cit.*, pp. 354–56.

reform of the land system through classification. In the 1909 report of Director George Otis Smith, it was brought out that it was the data which the Survey had been gathering for years which had permitted designating 162 million acres as nonirrigable and therefore open to entry under the Enlarged Homestead Act of that year. "No principle is more fundamental to real conservation," said Smith, "and at the same time more beneficial to the mining and other industries than this of giving preference to the highest possible use for the public lands. . . . With classification data at hand the principle of relative worth can be further developed."[34] Two years later Smith made stronger statements concerning the need for classification, advocating the separation of the surface from the subsurface mineral rights, and "disposition of the lands on terms that will secure the highest use, enforce development, and protect the public interest." Legislation based on these principles will, he added, secure the benefits of immediate utilization and "avoid the evils of speculative holdings of lands by fictitious or by admitted nonuse for the future enjoyment of the unearned increment or of the profits of monopolization." Smith favored the economic development of the public land resources for which there was an existing demand, but favored the "retention of such control as may insure against unnecessary waste or excessive charges to the consumer, and second, the reservation of title in the people of all resources the utilization of which is conjectural or the need of which is not immediate." Not since the days of William A. J. Sparks had such an effective and rational proposal been advanced by a government official for further changes in the land and mineral laws to achieve the highest possible use of the remaining public lands.[35]

It should be added, however, that the classification which the Geological Survey made for lands subject to entry under the Enlarged Homestead Act of 1909 was relatively simple, being based primarily on whether or not there was access to water for irrigation. The Geological Survey was not in a position, nor, in fact, was it asked, to give consideration to any other criterion (except rainfall) in classifying land. By 1917 it had classified 275,633,861 acres of public land as unsuitable for irrigation. These constituted a large part of the remaining unappropriated public lands.[36]

A major difficulty in framing legislation for the public lands which were at all useful for arable, dry or irrigation farming, or grazing was that the government Department best able to provide advice on agricultural land use prior to 1900 had no part in the administration of or shaping of policy

[34] Department of the Interior, *Annual Report, 1909,* Vol. I, pp. 177–78.

[35] Department of the Interior, *Annual Report, 1911,* Vol. 1, pp. 247–55. One may compare the reports of the GLO Commissioner for the same years and find them concentrating on details of work done and showing little vision of leadership in achieving improvements in public land policy. In the annual reports of the two agencies for 1912, for example, the Commissioner advocated legislation to regulate the "professional locators and pernicious literature in relation to the public lands," and to improve the requirements concerning the attendance of witnesses at land trials; Smith included a nine-page analysis of the bad working conditions of his staff which impaired their efficiency and again made an effective presentation of the case for classification work being done and for expansion. *Report, 1912,* pp. 144–48, 247–55, 260–62. Commissioner Clay Tallman's remark is interesting: "Registers, receivers, and surveyors generally are getting out of the habit of viewing those offices as political sinecures and are doing real substantial work, in many instances of a high order." Secretary of the Interior, *Report, 1914,* p. 170.

[36] Department of the Interior, *Annual Report, 1917,* p. 520. Actually, there were only 230,657,755 acres of public lands unsold, surveyed and unsurveyed, in the same year. This is exclusive of Alaska. *Ibid.,* p. 293.

for the public lands. Scientists of the Geological Survey in the Department of the Interior could roughly classify land according to a simple criterion of adequate rainfall or available water for irrigation but the Department of the Interior had no agronomists, no agricultural economists, no authorities who could speak on the forage value of native and imported grasses, no informed leaders on irrigation (until after 1902) and no livestock specialists and marketing experts. Measures that called for the most careful consideration by a combination of such experts—the Timber Culture and Desert Land Acts, the Carey Act, the Reclamation Act, the Kinkaid Act, and the Enlarged Homestead Act—had been drafted and adopted without the intensive analysis they needed and which technical experts available in the Department of Agriculture could have supplied.

It was to be many years before the technically competent agricultural experts in Agriculture were to be called on to testify on land settlement bills. These were the responsibility of Interior. But when the forest reservations were transferred to the Department of Agriculture in 1905, the gap between the Departments was slightly bridged. Included within the forest reservations were many millions of acres of fair to good forage land which, like the public lands, had at one time been overgrazed, their carrying capacity reduced. These lands provided summer forage for ranch owners at lower elevations who liked to drive their cattle or sheep up into the mountains with the coming of hot weather, by which time the grass on the public lands had been depleted. The Forest Service working closely with the stockmen had given permits to local ranchers for modest fees and had permitted homesteaders to graze their work horses and milk cows free but had shut out stockmen with no local base. It had permitted the erection of drift fences, improved water sources, and conducted experiments with new and imported grasses. The remarkable esprit de corps which Gifford Pinchot had established within the Service and the able staff he had built up were all in line with the nonpolitical character of many of the activities conducted by the Department of Agriculture. Henry S. Graves, Forester, summarized these achievements in 1914 as follows:[37]

1. The ability of the ranges within the forests to carry livestock had been increased.
2. Cattle fed in the forests emerged fat and ready for market in contrast to the poor condition of those grazing on public lands outside.
3. The improved condition of the cattle was due to better distribution of the livestock, herding, erection of drift fences, development of additional water sources, predator control, fencing and better breeding practices of stockmen using the forests.
4. Range conflicts had been eliminated.
5. Farm and ranch property adjacent to the forests had increased in value.
6. Homesteaders within the forests had acquired grazing rights.
7. Nomadic herders no longer encroached on the ranges and small settlers' improvements.
8. Grazing receipts amounted to $1 million, 35 percent of which directly benefited the states.

This array of accomplishments was becoming increasingly apparent to many stockmen.

Forest Homestead Act

Another measure which aided in bridging the gap between experts in various agricultural fields and land administering agencies and in providing the Department of Agriculture with an opportunity to ex-

[37] House Committee on Public Lands, *Hearings on Grazing Homesteads and the Regulation of Grazing on the Public Lands*, 1914, p. 31.

ercise its skills in classifying lands suitable for farming was the adoption by Congress of the Forest Homestead Act of June 11, 1906. There was a considerable acreage of nontimbered land included within the national forests which had agricultural possibilities. The Forest Homestead Act was designed to make possible homesteading on such land after it had been classified by the Department as suitable for farming and after it had been decided that selling the land would not cause injury to the forests. The act declared that settlers who had either exercised their homestead right or who had otherwise lost it might, if they were settled on the land they wished to enter on January 1, 1906, have an additional right of entry but must pay $2.50 an acre for the land. Since surveys were rarely extended over the forests, the lines of the forest homesteads might be surveyed according to metes and bounds. No commutation was to be allowed. Eleven counties in southern California where the forest reserves had been made more for watershed protection than for forest management and where the fire menace always existed were excluded from the provisions of the act, and some restrictions were placed on entries in the Black Hills Forest Reserve of South Dakota.[38]

The Forest Homestead Act was never to offer the many opportunities to settlers that the Kinkaid Act, the Enlarged Homestead Act, and the later Stock Raising Homestead Act did. Officials of the Forest Service were under pressure to open up potential agricultural land to settlers and to eliminate from the forests such areas as were not essential for watershed protection or for forest growth. On the other hand the Service was probably not anxious to have homesteaders within forest areas subject to extreme danger from fire. More agricultural land was therefore eliminated from the forests than was made available within them for homesteading. Between 1906 and 1915 the Department approved 13,000 forest homestead entries and rejected only 4,000. By 1915, 1,900,000 acres had been classified as open to entry which were sufficient for 18,000 settlers.[39] Subsequently the government was to regret that the Forest Homestead Act had been interpreted so generously. At the time this liberality made the Department of Agriculture popular with those basically interested in getting public land on the tax rolls.

Stock Raising Homesteads Considered

One more homestead law—one even more unwise—was yet to be enacted. In 1914 Harvey B. Fergusson introduced a bill to authorize 640-acre grazing homesteads. Fergusson was a long time resident of New Mexico whose seat in Congress was but lightly held and was soon to be lost. It was obvious he thought that in the 640-acre grazing homestead he had a popular issue and he took up much of the time of the Committee on Public Lands, of which he was a member, discoursing on the possibilities of development in New Mexico. Fergusson likened his state to Iowa except that he admitted that a full section, not a 160-acre homestead, would be necessary for a successful farm in New Mexico. A firm believer in free homesteads, he thought that if the homestead unit were increased to 640 acres it would accelerate the growth of his state as the Act of 1862 had Iowa's. (Actually, only lands that had gone begging, 2.5 percent of the area, were homesteaded in the Hawkeye State). When asked about water, Fergusson showed some embarrassment but thought that underground sources would be sufficient for domestic purposes and for stock. Classification was a bugaboo to him, as it was to other members of the committee who

[38] 34 Stat. 233.

[39] Department of Agriculture, *Yearbook, 1914*, p. 69, and *1915*, p. 67.

seemed to fear it would be excessively costly and would permit experts of the Department of Agricutlture to exercise too much influence in their states. In Fergusson's opinion New Mexico's future depended on the adoption of his measure, and he thought it would be equally helpful to the growth of other parts of the West. The land would pass out of Federal ownership and be placed on the tax roll.[40] In the light of the fact that New Mexico seems to have profited little if any from the Stock Raising Homestead Act of 1916, Congressman Fergusson's position is not altogether easy to understand.

Leasing or Homestead Controversy

The Committee on Public Lands had a second bill under consideration at the same time as it was hearing testimony on Fergusson's 640-acre stock raising homestead bill. William Kent, a member of the House from California who was an ardent conservationist and a cattleman, introduced a measure to authorize the establishment of grazing districts on the public lands under the control of the Secretary of Agriculture. Kent's bill had been drafted with the help of Daniel F. Houston, Secretary of Agriculture, and Henry Graves of the Forest Service. The Service had already acquired considerable experience by establishing grazing controls for the rangelands within the forest reservations and had begun to win the respect of stockmen for its work. It was now proposed to give the Department authority to establish grazing districts on the public lands outside the forests and to issue permits to stockmen to use the land on a fee basis. Permits were to be limited to 10 years, with preference given to homesteaders; permittees were to be allowed to fence their allotments and were to pay fees of not less than one half and not more than 4 cents an acre. Twenty-five percent of the fees collected was to be paid to the state in which they were collected. The measure tried to protect the rights of homesteaders to take up and settle upon land suitable for farming within the grazing districts. Local administrative boards consisting of stockmen using the lands were to be set up to administer each district and to decide what lands within them might be suitable for homesteading.

Dr. B. T. Galloway, the Acting Secretary of Agriculture, pointed out to the House Committee on Public Lands that the Department's Bureau of Animal Industry had experts on animal diseases, the Bureau of Plant Industry had studied the value of different types of grasses, the Biological Survey was at work on predators, and the Forest Service was experienced in leasing range lands and had the necessary staff and know-how to undertake a program of managing the public domain ranges.

The bulk of the testimony presented to the committee was favorable to leasing or to the application of the national forest methods of controlling the range through permits. Representatives of livestock associations testified that though they had some grievances with the national forest range management, they conceded that it was superior to the uncontrolled range of the public domain. It was brought out that a vote of members of the American National Livestock Association on the Kent bill showed 396 members favorable and 32 against. The slight impact the view of the cattlemen had upon the House Committee of 1914 is not easy to reconcile with the opinion, long widely held, of the political influence of both the sheepmen and cattlemen. Nor is it easy to explain why the stockmen appeared so well disposed to the Forest Service in 1914 and later were so antagonistic to it. The members of the

[40] Committee on Public Lands, *Hearings on Grazing Homesteads and the Regulation of Grazing on the Public Lands,* 1914, pp. 350–435, with numerous supporting letters, esp., 357, 374.

committee gave Dr. Galloway a hard time by the niggling questions they fired at him.

One of the purposes of the bill emphasized by several members of the House Committee during the hearings was to make possible an increase in the number of beef animals which could be supported on the rangelands and to lower the price of meat, "a universal necessity, especially to the laboring classes. . . ." Another objective was to make farming in the semiarid sections so attractive to homesteaders that they would no longer be diverted to the Canadian prairies where hundreds of thousands were going at that time. The nation needs "more States like . . . Kansas and Iowa where each citizen is the sovereign of a portion of the soil, the owner of his home and not tenant of some (perhaps) distant land lord . . ." Had Fergusson taken the trouble to glance at the Census of 1919 he would have learned that 38 percent of the farms in Iowa and 37 percent of those in Kansas were operated by managers and tenants and further investigation would have shown him that landlords living remote from the two states held much of the tenant operated land.[41]

The last witness to testify before the committee was A. Jones, Assistant Secretary of the Interior. Jones seemed to be unfamiliar with what had been accomplished on the rangelands within the national forests, expressed doubt that a lessee would invest in or improve the range he leased, and advanced the dubious maxim—and a surprising one to come from an American in 1914—that "the smallest unit of successful operation of an enterprise is the most profitable one" and thought this applied to land use as well as to other business activities. Jones had previously requested the registers and receivers of the land offices to reply to a series of questions concerning the amount of land available that might be suitable for 640-acre homesteads and had inquired whether leasing the grazing lands would interfere with the affected homesteaders' use of the lands. Leasing, which could virtually end the commissions then constituting the principal income of the land officers, naturally inclined them to look with great skepticism upon such a policy and with few exceptions they were strongly favorable to the 640-acre homestead proposal. Interestingly, three of the five New Mexico officers who responded quite controverted the Fergusson view with regard to the applicability of 640-acre homesteads to that state, declaring that the remaining lands were "strictly grazing," and they favored leasing.[42] One of the two who favored the 640-acre measure thought that a fourth of the land might be suitable for the full-section homesteads and realistically advocated that the balance be sold in lots as high as 10 sections. A Carson City, Nevada, register opposed the 640-acre law because it would enable large stockowners to have the best of the range entered for them and would in this way eliminate the small stockmen. Leasing was less objectionable to him than the 640-acre homesteads. Two Idaho officers favored the 640-acre law and one favored neither leasing nor larger homestead units.

In his concluding remarks Jones came closer than any officer of the Interior Department to conceding that the 320-acre law was not working altogether well. The greatest trouble in the administration of the homestead laws, he said, "is in preventing the people from taking up these lands under laws which are not applicable and under which they cannot support families. I think we are inviting disaster in many, many cases, and these lands will go to patent under existing law. . . ." But then, in a fatuous way, he declared that the large number of homestead filings—90,883 in

[41] *Ibid.*, pp. 9–12. The tenancy figures are computed from *Fourteenth Census of the United States, 1920,* Vol. vi., Part 1, pp. 534, 732.

[42] *Ibid.*, table following p. 466.

1912 and 96,170 in 1913—"indicates the great demands that there is for homes and that we ought to provide some means for giving them good homes [sic]."[43] Jones had no desire to have the public lands classified by the Department of Agriculture, as Congressman Kent had proposed and, in fact, did not favor any government classification, preferring to leave the decision as to whether land was fit for small grazing homesteads to entrymen.[44]

Despite all the accumulated evidence of the misuse of the settlement laws as shown in the reports of the two Public Land Commissions and in the Reports of the Commissioners of the General Land Office, the members of the committee were still optimistic about the future of homesteading if the size of the unit were further enlarged. Aside from William Kent there was not a member of the committee who was friendly to the stockmen's request for the extension of control over the rangelands so that their carrying capacity could be built up as that of grasslands in the national forests had been. Private ownership in small tracts of 640 acres was held to be superior to public ownership with leasing. After extensive hearings Representative Fergusson was permitted to make the report in favor of the 640-acre homestead law. Although the articulate members of the House Public Lands Committee had clearly indicated their disapproval of classification and leasing of public lands, Kent was permitted to report favorably a resolution calling upon the Department of the Interior to make an approximate classification of the unreserved public lands to indicate those not suitable for 640-acre grazing homesteads.[45]

In remarks included in the appendix of the same session Fergusson deplored the "plowing up and destruction of the valuable native grasses" which had resulted from the homesteading of 160- and 320-acre units in the semi-arid regions, and argued that to correct such abuse of the range, 640-acre units should be granted as an aid to the "poor" settler. Misuse of the range had reduced its carrying capacity, the number of meat animals had been contracted by more than half (though one can find no statistical evidence for such a statement) and the price of meat had risen. The main object of the 640-acre bill was to "restore and promote the live-stock and meat-producing capacity of the semi-arid States, and . . . to furnish homes to landless and homeless citizens of our country." Most important, said Fergusson, was the need of the western states to have the lands within their jurisdicition on the tax rolls "for land owning citizens would develop the land up to its highest possible use and value to make it easy to bear the hurden of taxes." He maintained that as much as a half billion acres of semi-arid lands were capable of being made into small stock raising homesteads.[46]

Fergusson was troubled that the West did not put up a united front in support of his homestead measure and though he did not want to appear unsympathetic to the livestock interests he bore down heavily on them for favoring leasing the grazing lands which would involve "a species of special legislation for a special class to the deterient, if not to the destruction, of the policy of furnishing homes to our citizens."[47]

[43] *Ibid.*, pp. 479–80.

[44] *House Reports,* 63d Cong., 1st sess., Vol. 2 (Serial No. 6559) , No. 626, p. 9.

[45] *House Reports,* 63d Cong., 2d sess., Vol. II (Serial No. 6559) , No. 579, pp. 1–2.

[46] *App. to Cong. Record,* 63d Cong., 2d sess., June 11, 1914, pp. 682–86.

[47] While Fergusson was making his plea for the adoption of the stock raising homestead measure John M. Evans revived the attack upon the officials of the Land Office for their efforts to prevent misuse of the settlement laws. He may have thought it good tactics to accuse officials of having set up a "system of espionage . . . as distasteful to the homeseekers as it is detrimental to the progress and development of the Western States." A large corps

(Cont. on p. 516.)

The Conference of Western Governors which had become a vehicle for attacking Federal management of the public lands and demanding that responsibility for their administration be transferred to the states jumped into the struggle for stock raising homesteads at its meeting in Denver in April 1914. At their 1913 meeting the governors had demanded that the new states be placed on a truly "equal footing" with the old by being given responsibility for and ownership of the land within their borders. Recognizing that this objective would not be gained, they asked that the conservation program on the public lands be placed in state hands, that public lands be speedily conveyed to private ownership, that 5 percent of the remaining public lands be given the states for public highways, that other grants be made for the establishment of forestry schools and that mineral lands be reopened to entry at nominal prices. In 1914 the conference reiterated its demands of the previous year and in addition asked for the adoption of a stock raising homestead law, for a summer homestead law that would permit people to acquire sites for summer homes in the forests, and asked that 10 percent of the remaining public lands be given the states (in addition to the 5 percent for good roads) for irrigation.[48]

Cattlemen and sheepmen once so powerful in the councils of the West, were now displaced by real estate groups, commercial clubs, railroad representatives, and other new economic forces who wanted to encourage immigration and the breakup of the range into 640-acre homesteads whose occupants, it was believed, would contribute more to growth and prosperity than the great cattle barons had ever done. Leasing of the range would lock up ownership in the hands of the absentee Federal government and keep out homesteaders; classification would take time, be expensive, and would give too much authority to bureaucrats. Since the 320-acre act was working badly, and even the Kinkaid Act in Nebraska not producing the benefits that had been expected of it, it could be predicted that extension of the 640-acre homestead unit to other states would be sure to harm the public rangelands and the large sheep and cattle interests. But western representation anticipated that this evil would be offset by the creation of tens of thousands of new farms whose occupants would stimulate the growth of towns and cities in their states.

Stock Raising Homestead Act Adopted

Edward T. Taylor, Congressman from Colorado, has a peculiar niche in history because he was the man who finally maneuvered through the House both the 640-acre Stock Raising Homestead Act in 1916 and later the Grazing Act of 1934, which took his name and in effect reversed the earlier act which he had come to regret. In calling up the 640-acre act, Taylor reminded the members of the House that representatives of the Department of the Interior had declared the Kinkaid Act had been "wonderfully successful" in making possible the swift development of western Nebraska. The Congressman optimistically reported that "hundreds of thousands" of people had taken up dry farming on the public lands under the Enlarged Homestead Act of 1909 and built up many rich and prosperous communities. With the better lands suitable for small homesteads largely gone, much of the remaining lands were arid, not

of special agents, acting as detectives, was spying on the "humble homesteader" to find reasons to report adversely on their entries and, as a result, hundreds of thousands of "industrious, honest, law-abiding citizens" had been driven away to find homes on the Canadian prairies. "There are no more patriotic, home-loving people in the world than those who are now attempting to acquire title to 160 acre tracts of land in the great arid west." *App. to Cong. Record,* 63d Cong., 2d sess., June 25, 1914, pp. 684–86.

[48] *Cong. Record,* 63d Cong., 2d sess., April 20, 1914, pp. 6894–95; *New York Times,* April 12, 1914.

suitable for irrigation, had no trees, but provided good forage. Such portions of them as were suitable for stock raising homesteads should be so classified and opened to entry in 640-acre units. Taylor conceded that the breakup of the rangelands into grazing homesteads would not be to the advantage of big stockmen, but the stockmen had been using the public lands as a grazing common, had paid no taxes on the land they used whereas the stock raising homesteads would become taxable when title passed to the entrymen. Thousands of people were just waiting to take advantage of the government's bounty. His measure would bring them into the West in swarms and permit that section to gain its greatest goal, "more people, more homes, and more property on the tax roles."[49]

The western demand for homesteads to attract population drowned out the pleas of the stockmen for protection of the range.[50] The Fergusson bill was offered to Congress as the unanimous recommendation of the Committee on Public Lands. So successfully had support been built up that there was no effective opposition. Neither was there any useful discussion of the views that Kent and the livestock interests had presented to the committee, no analysis of the economics of the move, no attention to how landless people just waiting for the adoption of the measure to enter the livestock business in a small way would find the capital to do so. A reading of the debates would scarcely alert one to the fact that there was an adverse interest that in the past had been most sensitively treated by members of Congress. Most of the discussion centered on efforts to assure those who had homesteaded under earlier legislation that they would be entitled to enter additional land.

The Stock Raising Homestead Act authorized the establishment of 640-acre homesteads in reasonably compact form on land that was "chiefly valuable for grazing and raising forage crops," contained no merchantable timber, was not susceptible to irrigation from any known source of water, and was of such character that 640 acres "are reasonably required for the support of a family." Only lands "designated" (not classified, for the West disapproved of the term) by the Secretary of the Interior (which meant the Geological Survey, not the Department of Agriculture) as suitable for stock raising were to be opened to entry under the measure. Permanent improvements to increase the value of the land for stock raising—presumably fencing or the digging of wells—were required to the extent of $1.25 an acre. Coal and other mineral rights were to be retained by the government and no commutation was to be allowed. Water holes and access lands needed for stock driveways were reserved. Persons who had homesteaded before under the Acts of 1862 and 1909 were allowed to make additional entries of contiguous land or land within 20 miles of the original entry that might bring their total to 640 acres. The only concession to stockmen was the authorization for the withdrawal of public lands from entry for stock driveways.[51]

News of the 640-acre free grant measure circulated quickly and by June 30, 1917, 61,909 applications for 23,962,456 acres had been made. This was almost as much as the entire number of filings for homesteads made the previous year, including 160-acre homesteads, 320-acre homesteads, and Kinkaid homesteads in Nebraska. Unfortunately, Congress had not appropriated the necessary funds for the classification of the lands and none of the entries could be ac-

[49] *Cong. Record,* 64th Cong., 1st sess., Jan. 16, 1915, pp. 1126 ff.

[50] Fergusson was now dead, being replaced by an equally insistent advocate of the 640-acre measure.

[51] Act of Dec. 29, 1916, 39 Stat., Part 1, p. 862.

cepted, though they were filed. On June 12, 1917, Congress voted $150,000 for classifying land but the task was to take months, even years, because the Interior Department interpreted the act as requiring field examinations, as one member of Congress said, of every 40-acre tract. The number of applicants for land had grown to 70,000 before an acre had been classified. One member of Congress who wanted speedy action claimed that applicants had moved upon the land and presumably begun their improvements without any certainty that their tracts would become subject to entry but when it was pointed out that the building of fences was illegal it was conceded that many of the persons referred to were in small towns waiting for the land they had selected to be designated as suitable for stock raising. In either case, haste in classifying the public lands was advisable and to assure speedy action remedial legislation, which seemed always to be called for after every major law affecting land entries, was considered.

A group of western Senators brought forth an amendment to the Act of 1916 that would direct the Secretary of the Interior to complete the classification of land subject to entry within 6 months. If classification were not completed within that time any person qualified to make an entry would become entitled to do so by accompanying his application with a verified statement supported by affidavits of two disinterested parties that the land for which he filed contained no merchantable timber, was not susceptible of irrigation, contained no water holes, and was chiefly valuable for grazing and forage crops. The government was to be privileged to contest his selection within 12 months but if it did not do so within that time the applicant's right to the entry would become valid. Paul Husting of Wisconsin pointed out that such a measure would make ineffective all the restrictive clauses of the original act and would throw open to entry all the remaining public lands, since classification could not possibly be completed in 6 months and no public officer would be anxious to question the rights of an entryman even if he had skirted the truth somewhat in his application. The measure was a fraud, he declared, though wrapped up in qualifying but meaningless phrases. He feared it was designed, as apparently he believed the Act of 1916 had been, to enable stockmen and other powerful groups to engross great areas, and would contribute further to the development of large estates and tenancy. His criticisms were sound, as Thomas J. Walsh partly conceded, but most members of the Senate thought otherwise. They voted for the adoption of the measure 51-3 with only Husting, Walsh, and Henry F. Hollis of New Hampshire opposing it. One might have expected Robert Marion LaFollette to have opposed the bill but, strangely enough, he was recorded as favorable to the measure. The House took no action.[52]

Failing in their efforts to nullify the classification provisions in the Act of 1916 the western Representatives secured a deficiency appropriation of $200,000 on March 28, 1918, and a regular appropriation on July 1, 1918, of $197,268. With $175,000 appropriated in 1919 and $300,000 in 1920 and 1922 it was possible for the Geological Survey to press forward its task and to soothe feelings in the West.

Western representatives were quite right in claiming that the delay in classifying the land was discouraging to the many who had proceeded to the public lands to gain a 640-acre homestead. Not until November 28, 1917, 11 months after the adoption of the Stock Raising Homestead Act, was the first application accepted and by June

[52] *Cong. Record*, 65th Cong., 1st sess., Sept. 27, Oct. 1, 1917, pp. 1457–58, 7546, 7554; Department of the Interior, *Annual Report, 1917*, pp. 178, 522.

30, 1918, only 7,500,000 acres had been classified and 734 applications accepted. Some 19 percent of the requests for designation of lands suitable for "stock raising" were denied, which may be an indication of what caused the delay.[53] An ominous warning was made by O. E. Baker, one of the world's leading population experts and an authority on crop yields. In 1918 after 45,000 applications for stock raising homesteads had been approved, Baker said: "In the opinion of those best informed most of these grazing homesteads which afford promise of supporting a family have been applied for."[54] Nevertheless applications continued to be made. In 1917 Congress had been told that 60,000 or 70,000 people were anxiously waiting for the privilege of filing their applications. By 1921 the total number of filings reached these figures and by that date 105,960,264 acres had been classified as suitable for stock raising homesteads. The peak of homesteading under the Stock Raising Homestead Act was reached in 1921 when 25,653 filings were made but they continued to average from five to seven thousand annually until the adoption of the Taylor Grazing Act in 1934.

Range Damage Accumulates

Representatives of both the sheepmen and cattlemen's associations were certain that the breakup of the range into small stock raising homesteads would damage its carrying capacity. In 1918, in view of the country's need for an increased supply of meat, they urged that the act be suspended for the duration of the war.[55] Drought had struck parts of the range states, some homesteaders had had to leave their claims and stockmen were compelled to remove their cattle and sheep elsewhere.[56] Other reports from the West revealed that men with inadequate capital were trying to establish homesteads, erecting crude shacks, breaking a little land and even sowing some wheat, as the only farming they could do since they had not the capital to buy livestock, and taking jobs in nearby communities while they stuck it out on their unproductive claims. The promise of 640 acres of land wore thin with many such people but still was sufficient to keep them on the land until they could gain title and sell to some rancher.[57]

Clay Tallman, Commissioner of the General Land Office, was aware of the gloomy predictions stockmen had made concerning the drastic effect the Act of 1916 would have on the public rangelands and he could hardly have been unaware of the unfavorable stories coming out of the West in 1920. Yet that same year he wrote:[58]

> We have now reached the point where the wonderful benefits or dire consequences which were predicted to be the results of this legislation must begin to be apparent. Our records show that up to date more than 36,000 stock-raising homesteads have been allowed; the Geological Service reports that a total of 82,000 petitions for designation have been received; that 67,000 have been acted on and a total area designated of more than 74,000,000 acres (including . . . original entries to which additional stock-raising entries have been applied for). This means that in the very near future the allowed entries will be more than doubled; it means that we will have tried out this act to the extent of 30,000,000 or 40,000,000 acres, enough to afford a basis of judgment as to whether this measure is a solution of the grazing-land problem or a calamity. As we have frequently predicted, it will be neither but, on the whole, beneficial.

Five years later the picture had changed completely. Secretary of the Interior Hu-

[53] Department of the Interior, *Annual Report, 1918*, p. 553.

[54] Department of Agriculture, *Yearbook, 1918*, p. 438.

[55] *Breeder's Gazette*, 73 (Jan. 31, 1918), 207.

[56] Peffer, *op. cit.*, p. 166.

[57] *Breeder's Gazette* for 1919 through 1923 has numerous items bearing on the failure of the 640-acre act, the early ones being perhaps an indication of wishful feeling.

[58] *GLO Annual Report, 1920*, pp. 37–38.

Year	Stock Raising Homesteads[a]				All Homestead Entries	
	Designated as Stock Raising (acres)	Original Entries		Final Entries		Original Entries
		Number	Acres	Number	Acres	Number	Acres
1918		734	236,758			35,875	7,419,628
1919		15,035	5,558,756			39,341	10,203,965
1920	74,492,336	20,979	8,228,749			48,532	13,511,100
1921	105,960,264	25,653	10,313,732	4,299	1,249,592		
1922	110,738,897	17,922	7,070,175	8,399	2,919,819		
1923	113,083,897	10,719	4,257,990	7,393	2,590,758		
1924	114,883,897	7,006	2,812,024				
1925	116,055,813	5,613	2,298,039				
1926	117,058,346	5,254	2,250,485				
1927	118,100,670	5,981	2,663,798				
Total		114,896	45,690,929				
1928	119,124,604	5,878	2,751,215	3,460	1,387,277	10,429	3,366,815
1929	120,266,561			3,271	1,350,384		
Total				55,079	20,232,398		
1930				2,530	1,057,262		
1931			4,201,766	2,462	1,051,593		
1932		7,291	3,543,582	2,460	1,099,642		
Total				62,531	23,440,896		
1933		4,884	2,358,231	1,775	732,640		
1934		5,136	2,567,888	2,152	937,402		
1935		2,133	1,051,870	3,361	1,477,886		
1936		812	326,331	3,492	1,560,652		
1937		174	74,909	3,734	1,715,457		
1938		106	43,078	2,590	1,214,727		
1939		49	29,963	2,160	1,015,944		
1940		5	3,639	1,274	600,673		
1941		17	7,772	714	346,800		
1942		14	8,451	303	145,449		

[a] Prepared by the Bureau of Land Management.

bert Work had lost all assurance that the law was working out well and feared, on the contrary, that it was doing major damage to the livestock industry. "Stock raising on a tract limited to 640 acres is not practicable," he declared; "homesteads for stock raising are rapidly reverting to the open range." The government "has been criticized because it invites its citizens to enter public lands of this character, invest their small savings in an effort to develop them, only to find that they have wasted their time and capital in a fruitless struggle against insurmountable conditions." He urged the repeal of the Stock Raising Homestead Act and that a policy of leasing the lands be substituted. In the hearings in 1926 on a bill to institute leasing of the public lands Senator Robert N. Stanfield, Chairman of the Senate Committee on Public Lands and Surveys, went further in calling the Stock Raising Homestead Act a failure. He said that in the main the 640-acre homesteads had been acquired by speculators for resale, that the act had been "detrimental to the utilization of grazing on the public domain," and had enabled speculators to collect tribute from livestock men. "In other words, it has been an instrument of blackmail upon the livestock interests, to a large extent."[59]

Will C. Barnes of the Forest Service had no hungry constituents to pacify. He looked upon the Stock Raising Homestead Act in a very different way from most members of Congress and was more rigorously critical than the Secretary. He knew that the West had been combed over carefully by land agents and landseekers since the passage of the Enlarged Homestead (Reed Smoot) Act and doubted that there remained any considerable quantity of land on which settlers could hope to make a living. In 1917 he stated his belief that it would take 35 acres of public land to keep a cow and that on the average it would require 50 acres. Not one tract in a thousand had surface water and well digging was expensive and generally fruitless. The act was nothing but a remnant sale. When it was reported to him that many persons from the East were either preparing to go west to search for land or were already flooding western communities for that purpose he warned that the best of the remaining lands would be taken up by people already on the spot who would hold for buyers.[60]

In 1923 Barnes was even more forthright in condemning the Stock Raising Homestead Act for the damage it was doing to the range and for the "vast amount of actual suffering" it was causing people who had been misled into believing they could make a living on such a small tract only suitable for grazing and producing nothing but Russian thistles and black alkali. His views, he conceded, would not be well received by some papers in the West, or by the "hosts of locators—those blood suckers who infest every little prairie town in the range region, and lure men out onto lands" on which they may previously have located for substantial fees one or more settlers who had earlier failed. Barnes told of one of "these harpies" who had located three successive families on a tract which all three had abandoned within a year. Our government, he complained, "deluded seekers of free government land" to take up 640-acre tracts, and had virtually made the Secretary of the Interior stand officially responsible for the statement that "they are capable of supporting a family." Here he was alluding to the sections in the act which required the Secretary of the Interior to open to entry only such lands as were fit for stock raising in section allotments and "are of such character that six

[59] *Hearings Before the Committee on Public Lands and Surveys, United States Senate, on Grazing Facilities on Public Lands,* 1926, p. 68.

[60] *Breeder's Gazette,* 71 (Jan. 18, 1917), 141–42.

able for enlarged or grazing homesteads, and were being seriously overgrazed, and hundred and forty acres are reasonably required for the support of a family."[61]

In its bulletin "Farm Lands Available for Settlement" of October 1922, the Department of Agriculture made clear that the Act of 1916 was proving an outright snare to deluded people who hoped to make a living on the 640-acre homesteads. The climate of the area open to entry under the act, taken as a whole, was adverse to crop growing, much of the land classified as suitable for stock raising homesteads was "barely up to the requirements of the Land Classification Board" and trying to make a living on 640 acres in most case was "extremely hazardous."[62]

Quest for Solution

By 1923 Henry Wallace, Secretary of Agriculture, was taking a strong line about the "reckless breakup of the range" by homesteaders who were encouraged to proceed upon the land without consideration of the economic and social waste they would cause. Sixty years of experience in the use of the public rangelands had shown that, except for such portions as could be irrigated, none were suitable for farming. The public lands had already lost a large part of their original forage producing value because of the destructive use to which they had been put, which added up to "an enormous loss" to the country. Wallace urged that the establishment of range control was vital to the welfare of the West and held that the livestock interests were ready for some such action. He thought rangelands near or adjacent to the national forests could be administered by the Forest Service but was not pushing strongly for the assignment of the lands to his Department.[63]

Secretary W. M. Jardine, Wallace's successor, took up the issue in 1925, stating bluntly that the Stock Raising Homestead Act had "added greatly to the unnecessary loss and misery attending the process of agricultural expansion." Jardine emphasized what was becoming increasingly clear; that homesteaders, lacking the capital with which to stock their land, plowed it and sowed wheat at a time when the country was troubled by overproduction and consequent low prices for the grain. The homesteaders had brought instability to the livestock industry, the open range continued to shrink in areas and to deteriorate through overgrazing; erosion and floods followed. The Secretary agreed with other critics that much of the homesteading was being done by people who planned to sell to ranchers, thus forcing the latter to increase their capital outlays unduly.[64] By 1925 both the Department of the Interior and the Department of Agriculture were advocating repeal of the Act of 1916 and the establishment of some form of regulation of the public rangelands.

William Peterson, Director of the Utah Agricultural College at Logan, in an address to the American National Livestock Association perhaps best described the status of the public lands in 1927 and the advantages which might come to them and to the livestock men if they were placed under organized management. While the Enlarged Homestead Act had proved effective in certain cases, it had been "a tremendous failure in others," by encouraging people to plow up land only fit for grazing. The 640-acre act had been no better in its results. In Utah it took 70 to 75 acres for the support of a cow, hence a 640-acre unit could support at the most only nine cows. Since the remaining public lands were not suit-

[61] *Breeder's Gazette,* 83 (March 22 and April 5, 1923), 395, 466.

[62] "Farm Lands available for Settlement," *Farmers' Bulletin No. 1271,* p. 32.

[63] Secretary of Agriculture, *Annual Report, 1923,* pp. 72–77.

[64] Secretary of Agriculture, *Annual Report, 1925,* pp. 29–30, 87–89.

since the livestock industry which was partly dependent upon them was being adversely affected, some form of regulation of lands was necessary. He believed that most of the range states were in favor of government control.[65]

William Spry, Commissioner of the General Land Office, addressing the same convention, did his best to convince the livestockmen that if the bill of the Senate Committee on Public Lands to provide for leasing of the remaining lands and the repeal of the 320- and 640-acre Homestead Acts became law, the Department of the Interior would not favor "commercializing the public lands," that is charging for their use at going economic rates.[66] It was this question of the rate that would be charged for the use of the lands that disturbed the stockmen. In the national forests the rates were set by officials who felt it was not fair to charge less than the going rate for pasturage. If it did, the government would be subsidizing stockmen grazing their cattle or sheep in the forests who were competing with others using other rangeland that had to carry the full commercial cost. After some sharp discussion of a resolution favoring the establishment of government controls over the remaining public lands, during which the cry of bureaucracy was raised and preference was expressed for giving the lands to the states, the resolution was adopted by 18-7.[67]

In 1928 the American National Livestock Association took a clear and unequivocal stand in favor of leasing the public lands and asked that "Congress immediately enact a law" for the leasing of the unappropriated public domain by the proper Federal agency; . . ."[68]

Representative Edward T. Taylor of the western Colorado district, himself a cattleman, in a reminiscing speech in Congress a year after the adoption of the Taylor Grazing Act, blamed the roving sheepmen who had no economic base and who had come "to monopolize a large share of the public domain to the ruinous injury of the small local farmers and stockmen. The resulting conflict of interest between the resident land-owning stockmen and these migratory owners had been very bitter, often resulting in bloodshed and strife of various kinds." In the absence of Federal regulation the states had been obliged to assume jurisdiction over the public lands and had enacted legislation providing a procedure for adjudicating such issues in the state courts. Individual priorities to ranges were recognized, exclusive right to public lands near developed stock water was acknowledged, and it was forbidden to graze sheep within 3 miles of a town or residence. Taylor conceded that the Forest Service over the course of 30 years had worked out "suitable rules and regulations" for the rangelands under its jurisdiction, and was preserving the range and rendering a great service to the stockmen and to the country, but he complained that "bureaucratic regulation is the law of the forest reserves."[69]

In her examination of the background of the adoption of the Taylor Grazing Act Miss E. Louise Peffer has shown how livestock interests became disaffected by the way the Forest Service managed the fee question for grazing in the forests though she places some of the blame on Congress for considering raising fees to the economic value of the forage. Forest Service officials

[65] American National Livestock Association, *Proceedings of the Thirty-first Annual Convention,* 1928, pp. 74–81.

[66] *Ibid.,* pp. 107 ff.

[67] *Ibid.,* p. 183.

[68] *Ibid.,* p. 97.

[69] *Cong. Record,* 74th Cong., 1st sess., June 28, 1935, p. 10394. Taylor added: "This is not the law under this Grazing Act."

also thought it desirable and only fair that the fees should be so based but had been reluctant to press the matter at a time when the livestock industry was going through a serious post-war depression, aggravated by droughts and the revival of range conflicts. There was another count against the Forest Service officials: they had cut the number of livestock permitted within the forests in order to allow the badly overgrazed areas to recover and also to allow newly arriving small settlers to graze up to 10 cattle in the forests.[70]

Discontent with the Forest Service made the virtues of the General Land Office and the Department of the Interior stand out in contrast when plans to bring some form of control to the remaining public lands were being considered. But the Interior Department had not acquired experience in range management and it had no agency, other than the General Land Office, to which responsibility could be delegated. From its inception in 1812 that Office had been primarily concerned with disposal through sale for revenue. Aside from its surveyors general, its principal local officials in the West were largely dependent on the fees they received and had shown in the past favor for legislation that would facilitate and increase the flow of land into private ownership. Whenever it had seemed to take a firm stand, as in the use of investigating agents which delayed patents, it had incurred the animosity of western people. The Department's prestige had not been improved by the handling of oil leases under Secretary Albert B. Fall.

There was an alternative to continued Federal ownership and the establishment of centralized leasing control: cession of the lands to the states in which they were located, Calhoun's old plan of the 1830's. It was to this plan that Herbert Hoover and his Secretary of the Interior, Ray Lyman Wilbur, turned in 1929 and for much the same reason that Calhoun had favored it in 1836. In presenting the matter to Congress the President averred that the western states "are today more competent to manage" the public lands "than is the Federal Government. Moreover we must seek every opportunity to retard the expansion of Federal bureaucracy and to place our communities in control of their own destinies." His first assumption, notwithstanding some fairly recent events, is dubious, but Calhoun would have agreed with it and with the reasoning behind the recommendation for cession, though he would have expressed himself in more durable prose.[71]

More concretely, the President suggested that, subject to full protection of rights of homesteaders on the public lands, the surface rights of the unappropriated lands (estimated at 190 million acres, plus 10 million acres withdrawn under the Act of 1909 for stock driveways, and 35 million acres withdrawn for coal and shale reserves), none of which produced any revenue to the Federal government and of which "the Federal Government is incapable of . . . adequate administration . . ." should be conveyed to the states for public school purposes. "For the best interest of the people as a whole, and people of the western states and the small farmers and stockmen by whom they are primarily used, they should be managed and the policies for their use determined by state governments." He requested of Congress authorization for the appointment of a commission to study "the whole question of the

[70] Probably nothing so antagonized the West as the reductions the Forest Service required of the herds of permittees except the actions of the investigating agents sent out by the Department of the Interior to ferret out cases where the land was being entered for second parties and the timber agents, to stop pillaging on public lands and to bring the guilty to punishment.

[71] Ray Lyman Wilbur and Arthur Mastick Hyde, *The Hoover Policies* (New York, 1937), p. 230.

public domain particularly the unreserved lands."[72]

After President Hoover had made his original proposal for a cession of the remaining lands to the states, but before the Public Land Committee had made its report, Benjamin H. Hibbard, author of a *History of the Public Land Policies,* which a generation of students has regarded as the basic work on public land questions, and a distinguished agricultural economist of the University of Wisconsin, published in the *Annals of the American Academy of Political and Social Science* a truly startling paper on "A National Land Policy to Conserve Land Values." The ideas had been discussed for some time by agricultural economists but they were brought together and here presented as a more thorough program of reform than merely turning the rangelands over to the states. Among the proposals Hibbard suggested were: (1) the government should cease selling land of doubtful value and quality; (2) it should regain possession of much submarginal land such as the cutovers and the homesteads that had been permitted on rangeland not suitable for cropping; (3) it should halt further reclamation development; (4) it should reforest some of the land withdrawn from cultivation and put other portions in wildlife refuges; and (5) tariffs should be reduced.[73]

Study Committee Makes Recommendations

Notwithstanding the highly charged political atmosphere prevailing in the House at the time, members gave serious consideration to the President's proposal. Some thought the study could better be made by the House and Senate Committees on Public Lands. William B. Bankhead of Alabama maintained that past commissions had not been productive of results (he might have alluded to both Commissions of 1879 and 1904), and R. A. Green of Florida argued that members of Presidential commissions "are usually appointed . . . with a certain purpose in view, and often their recommendations can pretty safely be recognized in advance." He went further, saying that members who might be appointed to the commission "could write 90 percent of their report the day after they are appointed." The best reply to these views was that the question of administration of the public lands had been before the two committees for many years, numerous bills had been forthcoming but none had drawn much support. The President had lent his prestige to a plan that, while not new, offered a way out of the cross purposes that had prevented action in the past and with a commission of distinguished leaders commending it the plan might gain sufficient support to be enacted. Authorization for the appointment of a Committee on the Conservation and Administration of the Public Domain was approved by both Houses.[74]

President Hoover appointed distinguished leaders in various fields. The chairman was James R. Garfield who had been Secretary of the Interior for 2 years under Theodore Roosevelt and closely identified with Gifford Pinchot's views on conservation. Both Ray Lyman Wilbur and Arthur M. Hyde, Secretaries of the Interior and Agriculture, were *ex officio* members. Other well-known figures were William B. Greeley, Chief Forester of the Forest Service from 1920 to 1928 and somewhat close to the Pinchot views; H. O. Bursum, former Senator from New Mexico; Gardner Cowles, publisher of the *Des Moines Register;* George Horace Lorimer, editor of the *Saturday Evening Post* and

[72] Wilbur and Hyde, *op. cit.,* pp. 232–33.

[73] *The Annals of the American Academy of Political and Social Science,* 148 (March 1930), 115–19.

[74] *Cong. Record,* 71st Cong., 2d sess., Dec. 23, 24, 1930, pp. 2249, 2324–29.

identified with conservation; Elwood Mead, Commissioner of Reclamation; and Mary Roberts Rinehart, writer; with 12 other less well-known men, including state land commissioners of Montana and Idaho.

The Committee's report was submitted on January 16, 1931. Its statement of general policies reflected a marked belief in the policies of conservation and efficient utilization previously advocated by Gifford Pinchot. "All portions of the unreserved and unappropriated public domain should be placed under responsible administration or regulation for the conservation and beneficial use of its resources." Areas important for national defense, reclamation, national forests, national parks and bird refuges should be reserved, i.e., retained by the Federal government. The balance of the public domain useful for grazing should be given the states if and when they were prepared to accept it and provide administrative control of use. Lands not accepted by the states should be placed under organized management by the Federal government. The committee obviously had its greatest difficulty in framing a recommendation for the mineral reserves. It finally suggested that when the states had developed a program of mineral land conservation and utilization uniform with that of the Federal government, including the payment into the Reclamation Fund of 52½ percent of the proceeds of their use, the reserves should be transferred to them, but until that time the reserves should remain in the central government. Where states did not move to take over the surface rights to the public lands the committee recommended that on approval of a properly authorized state officer the President should extend over the public lands the controls and regulations of the national forests and if state action was not authorized in 10 years Congress might direct the President to accomplish the same end without state action.

In the light of many and long sustained conflicts over proposals to consolidate all the land administering agencies in one department the committee's recommendation to achieve that end was a daring proposal, but one quite in line with President Hoover's views respecting the unnecessary overlapping and duplicating of services within government.[75]

Public lands shown on a map, drafted by the Forest Service, as desirable for addition to existing forests or creating into new ones were to be excepted from cession to the states. The committee recommended the creation of state boards of five members, one to be named by the President, one each by the Secretary of the Interior and the Secretary of Agriculture, and two by the state in which the lands were located. These boards were to decide what portion of the withheld lands should be added to the national forests, and what lands within the forests should be eliminated and restored to the public domain. The boards also should be authorized to select additional public lands for national defense, reclamation, parks, and bird refuges. States not accepting the cession might select and have patented to them isolated tracts of public lands up to 2,560 acres that when consolidated with state lands would make possible better management of the total.

The last two recommendations were the most debatable. The committee thought private ownership of agricultural and grazing lands, "except as to such areas as may be advisable or necessary for public use," should be the objective in the final use and disposition of the public domain. No one objected to this recommendation with re-

[75] The *Report of the Committee on Conservation and Administration of the Public Domain* was published in 1931 and was reprinted in *Hearings Before the Committee on Public Lands and Surveys, on Granting Remaining Unreserved Public Lands to States,* United States Senate, 72d Cong., 1st sess., March 15-April 5, 1932. For convenience I have used the copy in the Hearings.

spect to agricultural lands, but many questioned whether effective private management of the remaining grazing lands was possible.

Issues Unresolved

The National Conference on Land Utilization, called by the Secretary of Agriculture for a meeting in Chicago in November 1931, held a point of view very different from the Garfield committee. It recommended that the public ranges should be retained and administered by a Federal agency "in a manner similar to and in coordination with the national forests." The proposal for the conference came from L. C. Gray, the intellectual leader of the land planners in the Department of Agriculture who with M. L. Wilson, Howard R. Tolley, John D. Black, and George S. Wehrwein (who were also active in the Conference) were to play major roles in shaping the New Deal farm program. Gray, Wilson, Wehrwein, and perhaps the others were in agreement with Hibbard's proposals made the previous year. Though Elwood Mead, Commissioner of the Bureau of Reclamation and America's greatest battler for Federal reclamation, spoke at the conference (knowing that he was in a hostile group) the conference disagreed with him and with the recommendation of the Garfield committee that "the present conservative policy of reclamation development should be continued." In the depths of the Depression agricultural experts who were trying to find a way of dealing with the farm surpluses looked with skepticism upon further expansion of agriculture through reclaiming arid lands at heavy costs. The conference favored finishing projects already under way and rehabilitating the many badly planned ventures that had insufficient water but maintained that no new ones should be undertaken.[76]

One is entitled to wonder what President Hoover, an ardent advocate of order, efficiency, and consistency, thought of the activities of Gray anrd other intellectual leaders in the Department of Agriculture who differed so sharply on reclamation with Mead, on the ownership and management of the grazing lands with the Garfield Committee, and surely with Hoover himself in recommending what was later to become the submarginal land retirement program of the New Deal.

The Forest Service, always prepared for opportunities to extend its influence and enlarge its area of control, won a considerable victory when the Garfield committee adopted its plan of adding some 19 million acres—it actually favored 23,000,000—to its administration. However, the Forest Service objected to the proposal to eliminate from existing forests areas the state boards might recommend for omission. Both the Department of the Interior and the Department of Agriculture were to be represented on these boards but officials of the former could find little to praise in the report, for Interior stood to lose responsibility for the greater part of the unreserved and unappropriated lands without any compensating authority. The states could welcome the proposal to convey to them the nonmineral public domain lands but they, on second thought, came to realize that the real value in the lands was not in their forage value but in their minerals, which states were denied.

The Senate hearings on bills to carry out the recommendations of the Garfield committee indicated many cross currents in the thinking about the future of the remaining public lands. Utah opposed turning the land over to the states and instead urged that range management should be concentrated in the hands of the Depart-

[76] Proceedings of the National Conference on Land Utilization, p. 243. Richard S. Kirkendall, *Social Scientists and Farm Politics in the Age of Roosevelt* (Columbia, Mo., 1966), is useful for the background of the National Conference.

ment of Agriculture. Other western states welcomed the proposal to transfer to them the unappropriated lands but not without the minerals or the other reserved lands, and looked forward to the possibility of gaining some parts of the national forests. Conservationists, alerted by three able and effective persons, Gifford Pinchot, Henry S. Graves, and H. H. Chapman, opposed reopening the question of whether there was any land within the national forests that might better be returned to the public domain and thus be conveyed the states, and at the same time they expressed horror at the prospect of cession which would, they feared, break down the Roosevelt conservation program. They also were opposed to the original Hoover proposals to convey to the states the unreserved and unappropriated lands. Stockmen looked forward with some eagerness to lifting the hand of the Forest Service from the rangelands and advocated enactment of the major proposals, though there were notable exceptions.[77]

Nor were the journals of opinion strongly inclined toward either the President's proposal, the committee's report, or the Senate bills to carry out the recommendations. *Harpers Magazine* in an article by Ward Shepard called "The Handout Magnificent," scored the plans as a major step backward from the conservation and management policies the lands badly needed. The *New Republic's* article entitled "Flinging Away an Empire," the *Nation's* "Soil," and *Literary Digest's* "Row over Mr. Hoover's Gift Horse," and a second in the same journal, "Threat to National Forests; Dr. Wilbur's New Land Policy," all indicated anything but support.

In summary, President Hoover had shown a realization of the need for action to prevent the further deterioration of the unappropriated rangelands in the West and had wished to convey them to the states in the belief that they would give them the kind of management their condition called for. His greater faith in state as against Federal supervision had led him to ignore the fact that few or none of the states were prepared to take on the task of management; nor had he foreseen that the West would look upon the lands as a liability without the minerals which constituted by far the greater part of their actual value. Furthermore, he did not sense the strength of the conservation movement. The great resources of the West were regarded by conservationists as belonging to the Nation and all its people, to be retained for them and not conveyed to the western states. For many, especially in the older states, this belief in conservation had replaced the older theory that the public lands were owned by the people of all states and the revenue derived from them should be shared by all.[78]

Meantime, the Stock Raising Homestead Act and the 320- and 160-acre acts remained in operation, and continued to cut up and reduce the effectiveness of the public rangelands and aggravate the scramble for early grass. Between 1929 and 1934, 41,556 entries of land were made under the 640-acre act and a total of 54,465 entries under all the Homestead Acts. In this way the amount of rangeland open to livestock was further reduced by 24,449,408 acres, and the range livestock business further demoralized.

A later judgment of the damage done to the public rangelands by the Enlarged Homestead and the Stock Raising Homestead Acts was that 50 million acres of land, relatively good for grazing but sub-

[77] *Hearings, Committee on Public Lands and Surveys, on Granting Remaining Unreserved Public Lands to States,* March 15–April 5, 1932.

[78] E. O. Wooten was quoted as saying, "What was wanted is a policy of management and not merely a transfer of responsibility." *American Forests,* XXXVI (January 1930), 42.

marginal for crops, had gone to private ownership. Of this quantity 25 million acres had been abandoned for cultivation and 11 million acres additional now constituted "acute problem areas. On all of this area the range had been destroyed and will be of little use for years to come unless reseeded."[79]

[79] *The Western Range, S. Doc.,* 74th Cong., 2d sess., No. 199, 1956, p. 13.

CHAPTER XIX

Early Efforts to Protect Public Timberlands

Covered with towering stands of virgin hardwoods and conifers, the eastern shore of North America was in 1607 a formidable place to land and make a permanent settlement. Though the first settlers came from countries where trees were cherished and protected, they quickly learned that in the New World the forest was an enemy where Indians lurked. True it provided lumber for building, fencing, fuel, and game, but it had to be destroyed to make way for growing crops.

Forests: Deterrent to Progress

Over the course of the next two and a half centuries, Americans slashed, cut, and burned their way through the forests, destroying enormous quantities of growing timber while utilizing little, in their effort to make farms. At a very modest estimate, 150 million acres of the improved land in farms in 1900 had been cleared of its forest cover by the patient labor of the original settlers and their descendants. Would it be too much to estimate the land in its original state as having 4,000 board feet to the acre on the average? At this rate, 600 billion board feet had been for the most part destroyed by a people to whom the profits in land use came from producing crops, raising livestock, and establishing towns and cities. What appears to be reckless use of natural resources to a later generation was sound economics to the pioneers.[1]

This attitude toward the forest is well shown in a series of sketches written by an English emigrant to the backwoods north of Lake Ontario in 1833. Upon the family's arrival the previous year it had engaged a number of Irish choppers to clear and fence 10 acres for which their compensation was to be $14 an acre. When the trees were cut down, the trunks sawed into logs and drawn into great heaps by oxen, the family had "a glorious burning. . . ." [2]

> To effect this the more readily we called a logging-bee. We had a number of settlers attend, with yokes of oxen and men to assist us .... My husband ... set the heaps on fire; and a magnificent sight it was to see such a conflagration all around us ....
>
> Sometimes the fire will communicate with the forest and run over many hundreds of acres. This is not considered favourable for clearing,

[1] Roderick Nash, *Wilderness and the American Mind* (New Haven, 1967), pp. 22-43. James E. Defebaugh, *History of the Lumber Industry of America* (2 vols., Chicago, 1907), I:284, estimates that there were 524,800,000 acres of wooded land east of the Mississippi at the time white men came to America. If one allows only 2,000 board feet to the acre, this would bring the amount of board feet to 1,049,600,000,000. This figure does not include the enormous amount of lumber in the Pacific Coast and Rocky Mountain states. It is easily understood why settlers who faced such a tremendous extent of forested land, first looked upon it as an enemy.

[2] Mrs. C. P. S. Traill, *The Backwoods of Canada: Being Letters from the Wife of an Emigrant Officer* (London, 1836), pp. 131-32, 192-94.



Historical Logging Scene in Michigan, circa 1900

U.S. Forest Service

> as it destroys the underbrush and light timbers, which are almost indispensable for ensuring a good burning. It is, however, a magnificent sight to see the blazing trees and watch the awful progress of the conflagration, as it hurries onward, consuming all before it, or leaving such scorching mementoes as have blasted the forest growth for years.

The author adds, the ashes were scattered abroad after the fire.

White Pine and Live Oak for Ships

Though prodigal destruction of growing trees to clear land was to continue until well into the 19th century the need to conserve some of these resources was recognized even before 1688. The unusually tall, straight white pine trees of Maine and New Hampshire were admirably adapted by nature for ship masts needed by the British Navy. In violation of the British navigation laws, quantities of mast timber were shipped to countries other than England. To assure itself a sufficient supply, England in 1691 wrote into the new charter given to Massachusetts (of which Maine was a part), a section reserving to the Crown all trees on public lands which were over 24 inches through at a height of one foot from the base. Heavy penalties were prescribed for unlicensed cutting. Later, more stringent legislation provided for marking with a broad arrow the great white pine trees fit for masts. Like other efforts to restrict economic freedom in the Colonies these laws and penalties failed of their objective.[3] Trespass was common, enforcement officers few, prosecutors found judges and juries unfriendly and public opinion hostile, a situation that was to be reproduced many times in the future.

The new American Republic was less than a decade old when it found it necessary to build a navy. For this task timbers from the huge, sprawling live oak trees found along the coast from North Carolina to Spanish-held Louisiana seemed essential. Since it took 2,000 such trees, or the product of 57 acres, for a ship and since the supply was limited, steps were taken to safeguard that supply. In 1799 Congress appropriated $200,000 for the purchase, prop-

[3] Robert Greenhalgh Albion, *Forests and Sea Power. The Timber Problem of the Royal Navy, 1652-1862* (Cambridge, Mass., 1926), pp. 231 ff.; Joseph J. Malone, *Pine Trees and Politics. The Naval Stores and Forest Policy in Colonial New England, 1691-1775* (Seattle, Wash., 1964), *passim.*

agation, maintenance, and protection of live oak plantations. Two islands off the Georgia coast whose 1,950 acres were covered with live oaks were acquired from private interests. Twenty-eight years later the islands were still reported to be in the possession of the government, having been "generally under the care of an Agent, but the most valuable part of the timber has been removed. . . ." A spokesman for the Navy Department made no accounting for the timber once on the island nor did he explain why his Department had not set out young trees as the English had long since learned to do to maintain a supply for their Navy.[4]

In 1817 the United States began to safeguard and control some part of the live oak trees which had come into its possession as a result of the purchase of Louisiana. The Secretary of the Navy was instructed to explore and select such live oak and red cedar land as might satisfy the requirements of the Navy. Agents were appointed to select the desired tracts and to protect them from trespass on several islands in the new territory. A reservation of 19,000 acres was made; this land was said to contain 37,000 live oak trees fit for naval purposes. Cedar lands in Alabama were also recommended to be set aside but before action could be taken they had been sold. With the acquisition of Florida there came into American possession additional large tracts of valuable timber. Delay in adjudicating land claims, and the existence of numerous inlets and bays where cutting could be accomplished almost with impunity, despite the orders to naval ships to be on the watch for illegal cutting, led to "many depredations" and the loss of immense quantities of the most desirable timber. By 1827 the Atlantic Coast having been nearly depleted of live oaks, the Navy Department was recommending that the government should raise its own supply by planting seedlings on the islands it had purchased for reserves.[5]

This recommendation was promptly acted upon. Congress appropriated $10,000 in 1828 for the purchase of land in Florida suitable for the propagation of live oak trees and agents were appointed to get the plantation under way. Three years later Congress adopted a broad gauge law to provide for the punishment of those who destroyed or removed live oak and other timber or trees reserved for naval purposes. Fines up to the triple value of the trees cut and prison terms of one year were authorized. Informers were to have one half the fines.[6]

Conservation of valuable stands of timber and the development of a plantation of live oak to assure supplies of construction lumber for the future won support in Congress for a time. But the architecture of naval ships was changing, timber supplies of the country, other than live oak, were found to be extensive, and efforts to prevent depredations upon the reservations proved largely futile. Consequently, in 1843 the reservations in Louisiana were set aside or annulled and settlers on the land were permitted to gain ownership by preemption—an indication that they had been clearing and improving it.[7]

Jenks Cameron has traced the drab story of the government agents appointed to prevent trespass on the live oak and other valuable timber lands of the southern states in the later years. He found evidence that there were four or five such agents serving

[4] *House Reports*, 19th Cong., 2d sess., Vol. 5 (Serial No. 152), No. 114, p. 3.

[5] *Ibid.*, pp. 4-8.

[6] Acts of March 19, 1828, March 2, 1831, 4 Stat. 256, 472.

[7] There is much information on the live oak experiment in conservation in *American State Papers, Naval Affairs*, III, 47-50 and 917-58 and IV, 32-33, 81, 98-124 and 191-223. Jenks Cameron, in his *Development of Governmental Forest Control in the United States* (Baltimore, 1928), devotes an entire chapter to the live oak matter, with his usual sardonic humor.

between 1837 and 1844, three in 1845, five in 1857, and probably the same number in the intervening years. He concluded that they accomplished "precious little"; "the looting of the public live oak . . . was never lessened to any appreciable extent. . . ." Gideon Welles, Secretary of the Navy, in 1866 characterized the reservation policy as a "costly failure"; almost every stick the government had used for the Navy had been purchased from men who had cut illegally on the reservation. He recommended that the agents either be dropped or that Congress made a direct appropriation for them (they had been compensated in the past from funds appropriated for other purposes). In 1871 Congress appropriated $5,000 for the support of the agents. Why, is not quite clear, for the day of the wooden ship was passing and live oak timber was no longer important to the Navy. In 1879 and 1894 the reservations—at their height they had amounted to some 264,000 acres in five southern states, including Georgia—were restored to the public domain. The purchased land was made use of by other agencies of government. The reservation system had been a failure on "a colossal scale."[8] It should be added that these efforts to preserve the supply of live oak for the Navy were not an indication that the government was aware of the danger of depleting the supply of the major building timber—white pine.

Everyman's Timber

When settlers began to penetrate into the treeless prairies of Indiana, Illinois, and Iowa the wooded tracts along the streams drew their attention. If they were vacant and unimproved and either owned by the government or by absentees, the settlers helped themselves to whatever timber they needed, paying no attention to ownership, for it was considered common property. Local authorities understood the settlers' need of lumber and winked at their trespasses if, indeed, they were aware of the degree to which cutting on public lands by settlers was proceeding. Rarely were farm makers badgered by inquisitive agents. Absentee owners, however, who suffered from such pilfering could neither understand nor appreciate the conception of public or "common" ownership of timber.

The western point of view about growing timber on public lands was consistent with that section's view that unimproved land on the outer edge of settlement had no value until it was improved by the labor of man in clearing, fencing, building, draining, road building, and establishing social facilities. It was the labor of man upon the land that gave it value.

Timber groves near prairies were quickly cleared of their trees by the early settlers. Later comers had to bring in lumber from the pineries of the Lake States. At the same time from the fast growing cities of Milwaukee, Chicago, Peoria, Dubuque, Des Moines, and St. Louis there was an increasing demand for lumber. To the pineries came the more venturesome of the Maine loggers, and lumbermen like the Stephensons, the Luddingtons, and Morisons, the Coburns, who brought with them some capital, great skill, valuable experience, and entrepreneurial ability. They were to make fortunes from speculating in timberlands and in logging and milling operations at Saginaw Bay, Green Bay, Eau Claire, Chippewa Falls, and Minneapolis. These Yankee lumbermen came to share the western attitude toward government-owned timber.

Taking a few trees from public lands for fence rails, fuel, or house construction would not have brought protest but when small scale commercial lumbering got under way officials began to think of their obligation to protect government property. One type of trespass that was difficult to

[8] Cameron, *op. cit.*, pp. 68-99, esp. 93.

deal with was the cutting of trees for the fuel used by all the steamboats plying the western rivers before the Civil War. Small boats used from 12 to 24 cords a day, larger boats consumed 50 to 75 cords. At first the crews would "wood up" twice a day, salvaging driftwood and cutting trees which lined the streams. Later, woodyards were established on the banks, the supplies often being furnished by squatters on nearby public and private land. Boats would draw up to the yards, quickly load with the aid of all hands, and then rush onward. Few deplored the ravages of the boat crews, the woodyard operators, or the squatters. By mid-century the drain on existing supplies of timber had become very heavy, and coal was beginning to replace wood.[9]

Before the era of steamboating on the western rivers passed, the railroads were cutting deeply into traffic by water, especially in the 1850's. By 1865 it was estimated that railroads were using 6,500,000 cords of wood annually, in addition to hundreds of millions of board feet of construction lumber and millions of hemlock, chestnut, and oak ties.[10] The riverboats and railroads did not require the best timber for fuel and, except for the early days when the boat crews hastily cut wherever they stopped and whatever they found, contractors and woodyard operators used tops and branches and refuse wood for which there was no other demand. Trees fit for dimension lumber were held for construction purposes.

Prairie farms and developing western cities created an almost insatiable demand for lumber, particularly white pine. Wherever it was found in quantity mills would be established on the nearest drivable stream giving rise to new urban centers on the Saginaw, the Manistee in Michigan, the Fox, the Wisconsin, the Black and the Chippewa in Wisconsin, and the St. Croix and Mississippi in Minnesota. Farther down on the Mississippi the most modern mills were erected at Rock Island, Moline, Hannibal, Keokuk, and Dubuque and to them loggers drove their rafts of pine logs. Some loggers may have bought a quarter-section of land to give legality to their operations but they were not worried if their operations spread well beyond the boundaries of their tracts. Stories of the "big" or "rubber forty" abound in the pineries of the Lake States. Many loggers encroached upon land to which they had no title and thought no more of it than did the lonely settler cutting timber on an adjacent quarter-section belonging either to the United States or to an absentee owner.[11] Less frequently did the millmen permit their crews to trespass on public lands, except by error, for they had too much at stake to risk their substantial investments.

Years after large scale cutting in the pineries of the Lake States was under way there was no clear or well-established government policy toward the timberlands. As James W. Hurst has said, "the most important decisions in law about the disposal of the public timberlands in Wisconsin were taken by default."[12] There was no

[9] Louis C. Hunter, *Steamboats on the Western Rivers. An Economic and Technological History* (Cambridge, Mass., 1949), pp. 133, 264-69; Walter Havighurst, *Voices on the River. The Story of the Mississippi Waterways* (New York, 1964), pp. 64-65, 212-14, 216.

[10] United States Commissioner of Agriculture, *Annual Report, 1865*, pp. 210-34.

[11] Samuel Trask Dana, John H. Allison, and Russel N. Cunningham, *Minnesota Lands* (Washington, 1960), p. 101. The land not being open to purchase before survey and there being no way by which timber could be legally bought, the commercial lumbermen resorted to "technically illegal cutting" which was regarded "as both justifiable and desirable" since it was the only way timber could be acquired for the development of the prairies farther down the Mississippi.

[12] James Willard Hurst, *Law and Economic Growth. The Legal History of the Lumber Industry in Wisconsin, 1836-1915* (Cambridge, Mass., 1964), p. 62. "Through the years in which the

classification system. Timberlands were surveyed, offered at auction exactly like other land, and rarely brought more than the government price of $1.25, for the lumbermen quickly learned to make agreements to prevent competition as speculators and settlers had done before. After the auction all offered land was subject to private entry in unlimited amounts at $1.25 an acre. Most timberland in the Lake States was entered with land warrants and scrip which were available at substantial discount prices.

It has been seen that millmen of Saginaw Bay, Detroit, Green Bay, Eau Claire, and Minneapolis acquired tracts of timber extending from a few thousand acres to the huge Palms and Driggs holding of 486,000 acres, the Dodge, Satterlee and Mason holdings of 352,000 acres in Michigan, Wisconsin, Minnesota, Mississippi, Alabama, and Arkansas. Most of the entries by these men were made under a proper construction of the law, though they were commonly given preferential treatment in selecting their lands at the local land offices. All but the most circumspect loggers and millmen at one time or another became involved with the law and some seemed frequently to be in difficulties but it was the small loggers who were most constantly in trouble. That the early days of government noninterference with logging on public lands was passing was clear by the fifties.

Evidence of extensive trespassing on the public lands in Wisconsin is to be found in a frank communication of Alexander Montgomery, of Beaver Dam, Wisconsin, dated July 7, 1846. Montgomery reported there had been discussion in local ecclesiastical councils and in the pulpit on the subject of stealing timber from government land. Some ministers had declared timber stealing a heinous sin "altogether inconsistent with a profession of Godliness." Other professing Christians and some ministers held otherwise, defending the practice "as right in the sight of God and as tolerated by government." As a result of the dispute, a committee was appointed to consult with government officials to determine what countenance the government was disposed to give to the practice of taking timber from public lands and also "the weight of the arguments used by those who defend the practice. . . ." The questions the committee propounded to the authorities were: (1) Had the citizen any right to take timber on government land "from the fact that he is a citizen and thus one of the owners of all that is Government property?" (2) Is it a violation of law to take timber from unsold land when that land is open to entry? (3) Is it proper for a person to build a dam on a stream, overflow government land, and then prevent a purchaser who has bought overflowed land from interfering with the dam? (4) Does the fact that a man has bought prairie land justify him in taking timber from government land for fencing? (5) Is the marshal compelled to prosecute all complaints of timber trespass? Montgomery declared there was a "most destructive wasteful slashing of timber on the public lands in his vicinity; section after section had been stripped of all timber which could be used for rails or boards. Men who had an abundant supply of growing trees on their own land made a business of cutting all their needs on government land."[13] Three years later the register of the Green Bay Land Office complained bitterly of the extent of timber stealing on the Menominee, the Peshtigo, the Oconto, and other streams flowing into Green Bay. Upwards

United States sold or gave away almost all its forested land in Wisconsin, its public lands policy showed no significant recognition that the great forest of the Lake States was an asset which might have distinctive value or present special problems for its wise use."

[13] Letter of Alexander Montgomery, Beaver Dam, July 7, 1846, to the GLO Commissioner, "Miscellaneous Letters A," GLO.

of 15 million feet of pine had been plundered from the public lands and because there was no punishment, people had ceased buying timberland. The register's grievance is understandable for his commissions were small.[14]

A Senator of the United States, writing his reminiscenses in 1915, told of cutting and hauling 150 masts to the Escanaba River in the Upper Peninsula of Michigan in 1846 and of driving great quantities of pine down the Escanaba in 1847 for his employer, Sinclair and Wells. A few pages along in his reminiscences he says the land office opened for the first public sale of land in the Upper Peninsula in July 1848. Isaac Stephenson was not tattling on his employers but inadvertently revealed that they had been stealing timber from the public lands at least 2 years before any of the land could be purchased.[15] Eleven years before an acre of land had been sold in Minnesota and well before a single survey line had been run on the Wisconsin side of the St. Croix River, two sawmills were erected on the St. Croix and continued to draw their logs from public lands, at least until 1850 when the first public lands were sold.[16]

We have the number of logs (in board feet) said to have been scaled at the St. Croix boom fram 1840 to 1850. Since loggers took only the best of the white pine in this early period, they may have cut only 4,000 feet to the acre. At this rate, the total stumpage cut from 1840 to 1849 would represent the cutting on 76,000 acres which was no small contribution of the government to the lumber industry.[17]

The First Timber Agents

Meantime, the amount of trespassing on the St. Croix and its tributaries and on other pinery rivers, combined with protests and queries about cutting on public lands, led to the appointment of timber agents to search out instances of trespass and bring the evidence to the attention of the proper government agents for prosecution. It was not a mere accident that a Whig administration, with Thomas Ewing as Secretary of the Interior, led in efforts to suppress trespassing. Ewing had shown himself unfriendly to preemption, seemed anxious to protect the interests of the larger investors in public lands, and was himself somewhat of a speculator, as well as a very able lawyer.

[14] Harry F. Brown, Register, Green Bay, Oct. 24, 1849, to Justin Butterfield, *loc. cit.*

Logs Scaled at St. Croix (in Board Feet)[a]

1840	5,000,000
1841	8,000,000
1842	9,000,000
1843	10,000,000
1844	15,000,000
1845	20,000,000
1846	40,000,000
1847	60,000,000
1848	62,000,000
1849	75,000,000
1850	90,000,000
	394,000,000

[a] Larson, *History of the White Pine Industry in Minnesota*, p. 25

[15] Isaac Stephenson, *Recollections of a Long Life, 1829-1915* (Chicago, 1915), pp. 83-89. Sinclair and Wells were respectable Maine lumbermen who had transferred their investment and know-how from the woods of Maine to those of Northern Michigan and Wisconsin.

[16] Agnes M. Larson, *History of the White Pine Industry in Minnesota* (Minneapolis, 1949), much the best history of the lumber industry in any part of the United States, dates the beginning of sawmill operations on the St. Croix in 1839 (p. 15), and seems to say that the first Minnesota lands were offered in 1848 (p. 290). There were no recorded sales listed in the annual reports of the Commissioner until 1850, when 1,605 acres were sold and 24,160 acres were entered with land warrants.

Early protests against the threatening activities of the timber agents came from Minnesota and Wisconsin. A Wisconsin memorial urged relief, not prosecution, of those in the pineries. More specifically, it urged the revocation of all seizures or confiscation of pine lumber and the suspension of all prosecutions to permit the men to buy the land on the Wolf, Black, Chippewa, St. Croix, and Wisconsin Rivers on which they had been cutting. The legislature said, "It is a well known fact, that from the earliest settlement of the State, a numberous class of our citizens have been engaged in lumbering . . . upon these lands without being regarded or molested as trespassers." Their activities had materially aided in the development of the state. To have the government now bring to bear its enforcement procedure to halt this cutting threatened great hardship to the state.[18] The territorial legislature of Minnesota stated that encouragement had been given to the establishment of sawmills in the territory but not an acre of pine land had been offered at public sale and none was open to preemption. Lumbering was the major occupation of the territory, employing "hundreds of our citizens" and an immense capital. Now to be informed that all persons trespassing on the pine lands would be prosecuted threatened disaster to the territory and would result in "filling the pockets of a few government officials at the expense of the *law-abiding community,* without resulting in any advance to the government." The memorialists maintained that prosecution should only be brought against those trespassers who persisted in cutting on public land after it had been opened to preemption or sale and not bought by them. Occupants of pine lands and those engaged in lumbering "would be willing and anxious to pay the government for the land they occupy" and they should have that privilege. The legislature urged that all trespass actions be abandoned and that the lands be surveyed and brought into market at the earliest possible moment.[19]

It was in Congress that the enforcement activities of the timber agents brought out the most effective protests. Senator Augustus C. Dodge of Iowa pointed out that in the southern public land states there were seven suits for trespass on the public lands, in Ohio 38, in Illinois four, in Iowa 20, in Michigan 40, in Minnesota seven, in Wisconsin 77.[20] Dodge's strictures on the activities of the timber agents elicited a reply from A. H. H. Stuart who had succeeded Ewing as Secretary of the Interior. Stuart denied that the appointment of the timber agents was to "thwart or subvert the beneficent ends of the preemption system," or to harass and annoy settlers. Settlers could continue to cut timber on the public lands for their own use or for public improvements, as they had in the past. But timber was essential for the development of the prairies and "it is therefore a proper subject of protection by the government." Greedy adventurers who cut and destroyed and left an insufficient supply for settlers would be discouraged. Stuart added that he would amend his original instructions to the agents to permit actual settlers to take a "reasonable amount of timber for their own use or for public improvements, but to prosecute, with the utmost rigor, those who depredate on the public domain for the purpose of speculation."[21]

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[17] Miss Larson offers as her only source for the table, A. D. Cooke of the U.S. Surveyor General's Office in St. Paul.

[18] *Statutes of Wisconsin,* 1851, memorial of Feb. 21, 1851, p. 441.

[19] Memorial signed by Alexander Ramsey, Territorial Governor, Feb. 14, 1852, GLO Files. The italics are added.

[20] In Iowa, Federal officials were levying on wood cut for fuel for steamboats. *Cong. Globe,* 32d Cong., 1st sess., March 4, 1852, *App.,* p. 365.

[21] *Washington Republic,* March 18, 1851.

It was not only Democrats who excoriated the administration for its prosecution with "unrelenting severity" of the hardy lumberman who had dared to penetrate the remotest wilds to drag from their recesses materials for building towns and cities. Henry H. Sibley, a Whiggish-inclined delegate from Minnesota Territory, disliked the harassment of loggers by vexatious law proceedings, the outrageous confiscation of their logs cut on government land, the loss of the proceeds of their "honest labor. . . ."[22] Similarly, Ben C. Eastman of Wisconsin glorified the lumbermen who "at great risk, and with intense labor . . . penetrated this forest, erected mills" and opened a lumber trade that had made possible the growth of settlements throughout the Upper Mississippi Valley. He argued that it would be true government policy to let this enterprising class "use a portion of the timber of the public lands without stint, as a sort of bounty for the hardships they have undergone. . . ." Instead, Federal marshals and a whole posse of deputies and timber agents, appointed by the President without authority, "have been let loose upon this devoted class of our citizens, and they have been harassed almost without endurance with pretended seizures and suits, prosecutions and indictments, until they have been driven almost to the desperation of an open revolt against their prosecutors." [23]

Complaints of Senator Dodge, and Representatives Sibley and Eastman and of the territorial legislature of Minnesota about efforts to prevent depredations on the public timberlands led J. C. Clark, Solicitor of the Treasury, to write to the Secretary of the Interior:

> It is a grand pity that government will not give to these honest trespassers a 'carte blanche' to supply foreign markes [t] with lumber from these 'vast pineries!' The lumbermen, it would seem, are not to blame for stealing timber. It is all the fault of the government, in not bringing the lands into market!! If I refuse to offer my farm for Sale, any lawless coveter of another's property, has a right to enter upon it & steal my finest trees. This is the reasoning of the land pirates. They should be taught that this sort of argument is not consistent with sound morality.[24]

The Democratic victory of 1852 required the removal of the timber agents as well as most registers and receivers of the numerous land offices and the appointment of tried and true Democrats. Most important of the five new timber agents were Isaac W. Willard for Michigan, Herman M. Cady for eastern Wisconsin, and James B. Estes for western Wisconsin and Minnesota Territory. The instructions to the new agents said that the Department had no intention of interfering with the legitimate rights of bona fide settlers planning to preempt who had cut only for building, fencing, and construction of bridges but did insist that "speculators whose sole object and pursuit are the manufacture and exportation of lumber, for their own profit, without compensation to the government or benefit to the country whence it is taken" should be compelled to purchase the lands on which they had trespassed. The agents were directed to secure indictments of the guilty parties or to seize under due process the logs wherever they could be found. They were to seek out the district attorney or the Federal marshal and provide him with detailed information concerning the location of the trespass, the name of the trespasser, and names of witnesses.[25]

Cady reported in 1854 that he had seized the lumber of one Clark at Wolf River Falls and of one Lee at Oshkosh in addition to 25,000 logs cut on tributaries of the

[22] *Cong. Globe*, 32d Cong., 1st sess., April 24, 1852, *App.*, p. 486.

[23] *Ibid.*, p. 851.

[24] Commissioner's Files, GLO.

[25] R. McClelland, Secretary of the Interior, May 14, 1853, to Isaac Willard, Miscellaneous, Vol. 42, GLO.

Wisconsin. Clark's logs were sold at auction for $2,000. The owner of 20,000 logs was said to have agreed to purchase the lands trespassed upon as soon as they were offered at the Stevens Point Land Office. Cady doubted that he would enter the land and said that if the trespasser did not, he would sell his logs at auction. Two years earlier 5,000 logs had been cut on public land which had since come into the market. The trespasser assured Cady that he had entered the land but the latter refused to release the logs until he had checked the purchase.[26] Another complaint reached Cady of a tannery in Manitowoc which had taken several thousand cords of bark from public lands but the charge had not yet been investigated.[27] Cady made the mistake of deputizing an assistant timber agent to act for him in connection with a raft of logs said to have been cut on public lands. When the raft came out of the Chippewa the deputy tried to capture it with a gang of river toughs, giving ground for opponents to charge arbitrary action.

When reporting his extensive investigations for 1853 and 1854, Estes estimated that on the Black River alone over 200 million feet of pine had been cut on public lands, leaving many thousands of acres valueless. Until 1854 all 16 of the mills on this river had drawn their supplies from public lands. On the Chippewa and Menomonie, or Red Cedar, Rivers eight mills sawing an average of 2 million feet annually had drawn their logs from public land. In addition, a much larger amount of timber was being cut and driven to Beef Slough and on down the Mississippi to the mills in Iowa and Illinois towns. Nineteen mills on the St. Croix, the Rum, and the Mississippi, which together sawed between 40 million and 50 million feet annually, had taken their logs from public lands until 1853. Most loggers who had been cutting on public land, he reported, showed a disposition to buy the land as soon as it was made available for sale. Estes recommended that the lands be offered speedily, since the government did not favor selling stumpage. In some instances, when he tried to seize logs clearly cut on government land, he was told the owner had paid the previous timber agent—one Fillmore. Estes instituted 21 indictments against trespassers in Wisconsin, including another timber agent who had sold stumpage. He recommended the hiring of a steamboat capable of hauling large rafts to watch for and capture the rafts which were floated out of the Wisconsin and down the Mississippi.[28] Apparently Estes had no time to give to the "speculators" who were reported trespassing continually on the Chippewa Reservation in Minnesota, creating marked resentment among the Indians. The local Indian agent was of the opinion in 1854 that little could be done to halt the depredations.[29] In reporting on the accomplishments of his agency in 1855, Estes said that the instructions of the Commissioner, stating that the logs cut by trespassers on public land would be released if these persons entered the land, had had an excellent effect, as was shown by the greatly increased purchases at the La Crosse, Willow River, and Stillwater offices.[30]

Best known of the 1853-54 timber agents was Isaac Willard who fell into political difficulties because of his vigorous prosecution of the law. He reported that innumerable trespasses, much more extensive than previously reported, were seriously depleting the rich pineries. Willard

[26] McClelland, May 9, 1853, to Isaac W. Willard, copy, Secretary's Files, GLO.

[27] H. M. Cady, Green Bay, Aug. 23, Sept. 18, 1854, to John Wilson, File C, GLO.

[28] *H. Ex. Doc.*, 33d Cong., 1st sess., Vol. 14, No. 115 (Serial No. 727), pp. 8-10.

[29] *S. Ex. Doc.*, 33d Cong., 2d sess., Vol. 1, Part 1 (Serial No. 766), No. 1, p. 261.

[30] Cady, Dubuque, July 10, 1855, to GLO, File C.

seized great quantities of sawed lumber, logs, square timber, shingles, and shingle-bolts and hired people to guard them. Thirty-seven indictments were secured against persons accused of cutting illegally in the vicinity of the Manistee River and against the masters of several vessels who were engaged in carrying the lumber to Detroit. Meantime, the guilty parties commenced a systematic warfare upon him. Their agents and attorneys, with the aid of Chicago newspapers, attacked Willard for oppressive conduct and the *Tribune* even counseled resistance. Meetings were held by trespassers and attended by prominent Chicago lumber merchants, at which "violent harangues" were delivered against Willard. Threats were made against anyone who should remove the timber except the trespasser. A trial sale of seized property was made and a part was taken away but a mob prevented the balance from being taken and burned it. Several trespassers were arrested but soon were released by mobs; others were promptly set free by the judges. To cap the resistance to Willard's "oppressive" pursuit of lumbermen, the agent himself was arrested and held to bail for false imprisonment and, when released, was arrested again in Chicago by one of the big lumber merchants there for damages occasioned to his business. Nevertheless, a number of indicted persons were convicted and punished with jail terms and fines.

Willard estimated that more than 437 million feet of lumber worth $100,000 had been plundered from the public lands in Michigan and in addition great amounts of hemlock bark had been shipped to Chicago and Detroit tanneries. He concluded that the only way to stop trespassing on the public lands was to prosecute the guilty parties "with the utmost rigor of the law, to final conviction and punishment; and it is believed that the infliction of the penalties of the law, fine and imprisonment, in a few cases only, would entirely and effectually put an end to the depredations. . . ." [31]

Reports were coming to Senators James Shields and Stephen A. Douglas and to Representative John Wentworth from the Chicago district of the "obstructive and Tyrannical" actions of Willard in harassing loggers, millmen, shippers and others in the lumber trade, including eminent Chicago merchants to whom the lumber was consigned. Responsive to the pleas of the abused lumbermen, they brought formal charges against Willard, including mention of his indictment in Chicago, and demanded his removal. They also asked the Secretary of the Treasury to provide them with copies of all vouchers and accounts of Willard and other timber agents. Wentworth took the issue to Congress where he defended the men who went to the timber country and made their selections, but dared not leave them for several weeks to go to the land office to enter them. Whether they feared the timber would be stolen by other thieves or would be levied on by Willard is not clear. Wentworth was confident the timber agents were guilty of the "greatest abuses existing under the General Government." Those who paid tribute to them were allowed to steal all they pleased. The agents "persecute the depredators to penury and want. . . ." They are "now prosecuting honest men in our courts," merely because they "had mistaken section lines." They "have collected hundreds of thousands of dollars" from the accused lumbermen but have never paid a cent into the Federal Treasury.[32]

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[31] *H. Ex. Doc.*, 33d Cong., 1st sess., Vol. 14, No. 115 (Serial No. 727), pp. 11-17; Cameron, *The Development of Governmental Forest Control*, pp. 144-51.

[32] John Wentworth, to J. F. Callan, Sept. 10, 1854, filed with letter of J. F. Callan, Sept. 21, 1854, to John Wilson in File C, GLO; James Guthrie, to S. A. Douglas, copy, Sept. 18, 1854, in Congres-

Political repercussions, and perhaps a feeling that too much responsibility had been placed in men over whom the Department had little control (they were not bonded), led to the dismissal of the timber agents and of John Wilson, one of the ablest of the Commissioners of the General Land Office, who was held responsible for the trouble into which that office had fallen through his support of the agents.[33] Thomas A. Hendricks of Indiana, the new Commissioner, placed sole responsibility for preventing trespassing on the registers and receivers of the local land offices. They were already so burdened with handling the rush of applicants for land that they could not keep up with the posting work of the tract books and making out their monthly reports. Most of the officers were new in their posts, all Whigs having been removed by the Pierce administration. They also had to familiarize themselves with the hundreds of statutes and administrative circulars on which their decisions had to be based. Isaac Willard had traveled nearly 10,000 miles in less than a year ferreting out trespasses, seizing lumber, arranging for its sale, testifying against the accused. How the registers and receivers could make such trips without neglecting their official duties at the office was not explained. Commissioner Hendricks on November 29, 1856, relating continued complaints by settlers of trespass by loggers fatuously said: "It is gratifying to report" that his instruction to the local officers "has been in a great measure successful, and depredations, hitherto committed to a deplorable extent, have almost entirely ceased." [34]

Timber Trespass Intensifies

Trespassing did not cease. Within 3 months of issuing his circular to the registers and receivers, Hendricks was writing about the theft of 250,000 feet of logs in Minnesota, extensive trespassing in Michigan, large-scale cutting of pine timber on the Winnebago and Chippewa lands in Minnesota and the cutting of 3,000 cords of wood and 1,300 logs near Winona, Minnesota. These and other complaints pouring in led Hendricks to change his mind and to appoint timber agents again since it was evident the local officers were not able to give the public lands any real protection. Unfortunately he revived the worst feature of the earlier policy by making the agents' compensation largely or entirely dependent upon the amount they were able to collect from trespassers. Hendricks agreed to pay one agent $1 a day and agreed to accept Cady's offer to serve as timber agent without pay unless he collected money from sales of timber seized.[35] His appointees were paid so little and probably showed so little concern about their obligations that J. M. Edmunds, who succeeded Hendricks, seemed to be unaware that timber agents had been again appointed.[36]

By 1859 trespassers in Minnesota had become so bold, their operations so extensive, and complaints of their activities

sional Letters, No. 6, GLO; *Cong. Globe*, 33d Cong., 1st sess., Feb. 23, 1854, p. 457; *H. Ex. Doc.*, 33d Cong., 1st sess., Vol. 14, No. 115 (Serial No. 727), p. 16.

[33] See Cameron, *Development of Governmental Forest Control*, pp. 152-54, for the way the dismissal was carried out.

[34] *H. Ex. Doc.*, 34th Cong., 3d sess., Vol. 1 (Serial No. 893), No. 1, p. 217; *H. Ex. Doc.*, 35th Cong., 2d sess., Vol. 2 (Serial No. 997), No. 2, p. 138.

[35] Letters of Hendricks of March 21, 20, April 22, and 25, 1856, to registers and receivers, and Oct. 25, 1856, to Almon B. Everts, and to J. Thompson, Nov. 24, 1858, Misc. Vol. 42, GLO.

[36] Caleb Smith, Secretary of the Interior, who was looking for patronage, recommended that one of his friends be appointed but Edmunds was skeptical. Edmunds to Caleb Smith, Dec. 10, 1861, Misc. Vol. 42, GLO.

so numerous that steps had to be taken to suppress them. Federal marshals were ordered to proceed against the trespassers; some persons were arrested, including Dorilus Morrison, one of the most prominent Minnesota lumbermen. Quickly the politicians moved in to demand such actions be halted and that the arrested men be permitted to buy the land on which they had made depredations and at the same time to recover their logs. Numerous letters from Senator Henry M. Rice and Representative Cyrus Aldrich of Minnesota and Representative Cadwallader Washburn of Wisconsin in behalf of Morrison and others of the accused who were willing to pay their fines convinced the administrative authorities that other punishment was not necessary "as they have been scared and will probably not steal as before."[37]

From 1856 to 1877, with the exception of the one or two agents appointed by Hendricks, responsibility for protecting the public timberlands against pillaging was left either in the hands of the registers and receivers, or alternatively, as part of the responsibility of the surveyors general. These local officers were permitted to deputize agents for short periods to follow up rumors of trespass, get evidence, and even appear as witnesses in court. Since the employment of these special agents depended on the success they achieved and the collections they brought in, they accomplished much more than the regular officers could, but there was no consistent policy followed in their employment. About all that could be said for them was that they more than covered the cost of their employment. They certainly did little to prevent trespass.

It has been seen that the timber of absentee owners was regarded as fair game by neighbors who needed fencing and fuel wood. The experiences of Cyrus Woodman, who made a small fortune in buying both prairie and wooded land for speculation in Illinois and Wisconsin and who was constantly troubled by the depredations of local people, are typical. Years of effort through hired agents to prevent the theft of valuable stands of timber were mostly unsuccessful. Finally Woodman was told by one person who wished to buy a tract of land from him that it was known the land belonged to a speculator and that another winter would see every stick of timber on it stolen.[38] Indeed by the 1870's it was recognized in Wisconsin that the only effective way absentee owners could preserve the pine on privately owned land was to have a local agent who would cruise the land frequently and warn off all plunderers.[39]

The largest investment in Wisconsin pine lands was made by Ezra Cornell for the university he founded at Ithaca, New York. He acquired almost a half million acres in the Chippewa Valley with the agricultural college land scrip given to New York State. By the middle seventies extensive depredations were being made on the lands closest to drivable streams by responsible lumbermen who challenged the right of Cornell University to hold such a huge acreage for rising prices. They continued to cut on the land and declared that they would carry the issue through the courts and to the state legislature. They introduced into the legislature a resolution instructing the state

[37] Numerous letters about these transactions from Joseph S. Wilson, esp. Wilson to Jacob Thompson, June 29, 1860, in Misc. Vol. 42, GLO.

[38] James Hinman, Jan. 7, 21, 27, Feb. 1, 23, 1856, to Woodman; C. K. Dean, Feb. 14, June 1, 1856, to Woodman; R. E. Burns, July 8, 1860, to Woodman, Woodman MSS., Wisconsin State Historial Society.

[39] *River Pilot,* Feb. 6, 1869, and the same in *Wisconsin Lumberman,* II (May 1874), 144; Larry Gara, *Westernized Yankee. The Story of Cyrus Woodman* (Madison, Wis., 1956), pp. 31-32, 44, 51, 143.

attorney general to bring quo warranto proceedings to determine by what right the university held title to such an estate. Although this action failed, representatives of the university found that Wisconsin law "throws its arms about and around the Loggers in such an effectual and intimate fashion that nothing but 'perjury,' which must be proven in open court, will suffice to penetrate the legal armor of the poor logger."[40]

Most land grant railroads and states had their difficulties with timber thieves in much the same way the Federal government did. The Illinois Central Railroad was compelled to protect its timbered lands in southern Illinois by appointing agents to cruise the region, find cases of trespass, attach the timber products, bring the accused into court, and try to get juries to convict. It had to confess that the efforts of its agents had not met with much success because of the hostility of local people to the seizure of logs and what was looked upon as the harassing of poor men by a powerful absentee monopoly.[41]

In his *Empire in Pine: The Story of Lumbering in Wisconsin, 1830-1900,* Robert F. Fries has told the story of the efforts of Wisconsin to prevent depredations upon state land. A series of laws against trespassers was enacted beginning in 1855 and as many as 20 timber agents were functioning at one time to prevent depredations or punish trespassers but all to little effect. Politics, the appointment of incompetent people as timber agents, and the fact that public opinion was either indifferent to or opposed the enforcement of the laws made the task of protecting the state's timber almost hopeless. A state forester is reported as saying in 1906 that scarcely a 40-acre tract owned by the state had escaped trespass and he added that the same would apply to Federal lands within Wisconsin.[42]

What made enforcement of timber trespass laws particularly difficult was not only public apathy and the older feeling, slowly passing away, that growing trees were a deterrent to progress and had to be destroyed to make way for farms, towns and cities, but also that government land policy tolerated and indeed encouraged squatting, the making of improvements without ownership. Nor had it been regarded as wrong for a settler to cut a few cords of wood on neighboring public land for sale to passing steamboats, or to build a raft and float products down to New Orleans. Under the preemption laws a settler could squat upon unsurveyed land, file his declaratory statement within 6 months after the survey had been completed, and have another 12 months before he had to prove up, pay his $200 for the quarter-section and take title. In these 18 months he could cut a lot of timber. If caught, he could plead that he intended to prove up as soon as the land office was open or at the conclusion of the 12 months after his original filing. He may have had no intention of making a per-

[40] J. W. Williams, June 19, 1876, to H. C. Putnam, Williams Letter Book No. 1, and Smith Robertson, May 18, 1878, to J. W. Williams, Cornell University Archives. I have treated trespassing upon the university lands in my *Wisconsin Pine Lands of Cornell University* (Ithaca, 1943), *passim.*

[41] Gates, *The Colonization Work of the Illinois Central Railroad* (Cambridge, Mass., 1934), pp. 324ff.

[42] Fries, *Story of Lumbering* (Madison, Wis., 1951), pp. 195-201. Larson, *The White Pine Industry in Minnesota,* pp. 336-41, traces the early attempts of Minnesota to prevent trespass on state timberlands with attention to the series of laws which were entirely futile and the weak, inefficient, always complacent if not corrupt administration. She explains the widespread tendency to take advantage of the weakness of state administration as owing to the general belief in "laissez-faire, rugged individualism, and the legend of inexhaustibility." Also useful is Lucile Kane, "Federal Protection of Public Timber in the Upper Great Lake States," *Agricultural History,* 23 (April 1949), 135-39.

manent settlement but he was conforming to the law.

When railroads were granted broad rights-of-way through the public lands they were given the privilege of drawing needed supplies of timber from adjacent land, but contractors were in many instances obliged to go farther afield for ties and fill and few there were to object if they helped themselves from the resources of the public land. When mining developed, first in the lead districts of Wisconsin, Illinois, and Missouri, later in Upper Michigan, Nevada, and California, the loss of timber from the public lands became enormous but again was sanctioned in a backhanded fashion by failure to prosecute and by toleration of the trespassing. It was only when the commercial exploitation of the white pine of the Lake States got under way in the fifties that public resentment against depredations on public lands was aroused. Yet it still was merely an extension of a practice that had long been condoned, though now it was being done on such a large scale that it aroused the nascent antimonopoly feeling in the West which welcomed efforts to limit if not to end depredations by the larger operators.

When trespassers were caught red-handed and could not deny they had cut timber on public lands, it was long the practice for the government to allow the agents to compromise with the offenders by allowing them to pay 50 cents per thousand board feet together with the expenses of the agents in making the seizure. Somewhat later the compromise price was raised to $2.50 a thousand with costs. All such payments went into a judiciary fund from which the expenses of agents deputized by the registers and receivers were paid. Such a policy was regarded as leading to abuses, and beginning in 1872 annual appropriations of $5,000 to $10,000 were made for the payment of costs.

Increasing Enforcement Efforts

Notwithstanding the low level of public morality in the Gilded Age and the marked movement away from the earlier view that a public office is a public trust, there were some Federal officials who had the public welfare in mind. One of them, Land Commissioner S. S. Burdett, recommended a drastic change of policy toward the United States timberlands. His proposal was taken over and elaborated by his successor, J. A. Williamson, in 1876. Burdett and Williamson critically examined the government's past timberland policy contrasting America's "wicked and wanton waste" of its timberlands with the "restoration and preservation" of forests practiced in the enlightened countries of western Europe. They predicted that a "national calamity" was being rapidly and surely brought upon the country by the useless destruction of the forests. Lumbermen and dealers in timberlands made a mockery of the settlement laws, the principal means of gaining ownership of unoffered land, by hiring people to make entries for them. They thus contributed to disrespect for all land laws in the West.

Timbered lands, said Burdett, should not be subject to entry under either the settlement laws or the scrip measures; they should be sold only for cash after they had been appraised. Here he was far ahead of his time. Rarely has the government appraised and sold its timberland though it has appraised and sold timberlands on Indian reservations and cutting rights in national forests and on public domain. Burdett wanted no compounding with trespassers "as is now the custom." Instead he favored confiscating outright all timber cut on public lands and fining and imprisoning offenders. In the mining districts, where generally the land was not surveyed, Burdett proposed that expert agents should estimate the amount

of timber taken, appraise it and exact a reasonable price from the mining companies. He refuted complaints that his proposal would involve the employment of numerous agents at heavy expense by pointing out, somewhat exaggeratedly, that if the government effectively prevented good pine from being obtained by theft from government lands these lands would bring $30 an acre and at this price the timber would be more carefully husbanded. He showed the absurdity of the government's giving away under the Timber Culture Act 160 acres to persons who would raise trees on their quarter-sections while at the same time permitting homesteaders and preemptors to acquire in a shorter time quarter-sections which would be subsequently transferred to lumbermen for cutting. He concluded by urging haste in adopting his recommendations. Enormous losses were being sustained by the government and equally great benefits were being enjoyed by the lumbermen.[43]

The appointment of Carl Schurz as Secretary of the Interior in 1877 by President Hayes was as heartening to the advocates of good government as had been the appointment of Jacob Cox, also a civil service reformer, by President Grant in 1869. A strong advocate of civil service reform who had no liking for the corruption which flourished so extensively in the Gilded Age, or for the kind of machine politics associated with the Camerons, Conklings, and Chandlers, Schurz tried to make his Department a model of integrity, efficiency, and responsibility. In contrast to his predecessors, Schurz was familiar with forestry practices abroad and with the way Europeans kept great natural scenic spots from being vulgarly exploited for commercial purposes. He appreciated the unique character of the two species of redwood trees in California, "the noblest and oldest in the world," and recommended that at least two townships in the Coast Range, and two in the Sierra Nevada Mountains bearing these trees should be reserved from sale or disposal.[44] Before he had been in office a year Schurz was being subjected to "the onslought of the land-jobbers, and Indian Ring" and, as he once said: "It is a constant fight with the sharks that surround the Indian Bureau, the General Land Office, the Pension Office, and the Patent Office, and a ceaseless struggle with perplexing questions and situations. . . ."[45] Schurz retained Williamson in the Land Office and the two seemed to work well in their efforts to give better protection to the forest lands.

Even before the change of administration in 1877, Williamson had decided to relieve the local officers of responsibility for preventing depredations which they could not adequately handle and to revive the use of timber agents. He had found that working through the registers and receivers had produced "no practical results in the way of suppression of depredations or collection of values," that there was much looseness in the hiring of deputies by the registers and receivers, that compromises had been made without authority and funds received but not accounted for. Possibly he was a bit harsh in saying that the collections from the depredators had been slight—collections had amounted since 1854 to $199,998, while the costs had been $45,624—but they were more the result of the activities of the Federal marshals and district attorneys

[43] Burdett's views were best set forth in his report of 1876 which I have followed here. *H. Ex. Doc.*, 44th Cong., 2d sess., Vol. 4 (Serial No. 1749), No. 1, Part 5, pp. 7-9.

[44] C. Raymond Clar, *California Government and Forestry* (Sacramento, 1959), p. 69.

[45] *The Nation,* XXV (Nov. 1, 1877), 261; Frederic Bancroft (ed.), *Speeches, Correspondence and Political Papers of Carl Schurz* (6 vols., New York, 1913), 3:82.

than of the timber agents. Williamson contended that the net of $154,373 was little more than the value of the timber on 5,000 acres (again a considerable exaggeration).[46]

Men without any apparent legal or forestry experience that would fit them for their new duties were rapidly appointed by the Commissioner and sent into the three Lake States, all the southern public land states, California, Oregon, Washington, Utah, Colorado, and Montana. They were particularly cautioned to keep their appointments and objectives to themselves and not to reveal them to the surveyors general or the local land officers for if the latter were implicated in any way in timber stealing they could make it impossible to gather evidence of fraud. The timber agents were not to enter into any compromise with depredators and were to be most guarded and discreet. It was no difficult task to find clear instances of depredations on the public lands, but to secure witnesses who would willingly appear in court to testify, and to get the necessary court orders for seizure of the logs or lumber and to hold them until the trial was over was not easy.[47] Williamson's first report of the results of this burst of activity was impressive. In Louisiana, 100,000 logs had been seized, most of which had been sold, but a large proportion of them had to be bought at the sale by government representatives because of a combination to keep the price down. In Minnesota juries awarded the government the value of logs in booms in 19 cases, 25 indictments were found by grand juries, and guilty pleas were entered in three cases. Farther west the demand for railroad ties and mining timbers had induced numerous individuals to cut on public lands. From all these and other investigations and legal actions Williamson expected the government would recover $100,000.[48]

In 1878, the last year the Department was free of restrictive legislation hampering the prosecution of trespassers, the Commissioner reported eight indictments in California involving the cutting of 54,070 trees having an estimated value of $84,899; in Florida 16 indictments had been obtained involving the cutting of 6,400 logs, 1,400,000 feet of lumber, the making of 26,000 barrels of rosin and 100 barrels of turpentine with a total value of $111,800. In Louisiana 3,066,000 feet of lumber and 122,504 logs had been seized, one defendant had confessed judgment, and $30,281 had been realized from the sale of logs and lumber. In Minnesota nine persons had confessed judgment. Elsewhere in Colorado, Wisconsin, Mississippi, and Arkansas large-scale trespassing was reported and investigations were being pushed.[49]

Williamson was not primarily concerned with the gross returns resulting from the flurry of investigations, seizures, fines and sales, but with ending the widespread practice of stealing timber from the public lands by making the risks too great. The kind of sporadic, ill-planned, and semi-hidden cutting the plunderers carried on was extremely wasteful and destructive. Speculators were gaining ownership of

[46] *S. Ex. Doc.*, 56th Cong., 1st and 2d sess., Vol. 1 (Serial No. 1780), No. 9, pp. 6-9.

[47] As was to be expected there were quick repercussions in Congress from the seizures and fines. The Board of Trade of Mobile condemned the "totally unnecessary, arbitrary" and reckless actions, declared that they would stop the mills from operating and throw thousands of workers out of employment and "inflict widespread financial ruin ... on every branch of business on this Gulf Coast." Another party declared that the southern coast of Mississippi was in a state of blockade, threatening the industry on which 20,000 people depend. "Two days hence, five thousand women and children will want bread and meat, and be confronted with starvation." The hyperbole is obvious. *Cong. Record*, 45th Cong., 1st sess., Nov. 16, 1877, p. 444.

[48] *GLO Annual Report, 1877*, pp. 16-23.

[49] *GLO Annual Report, 1878*, pp. 122-24.

valuable forest land for much less than its actual value and cheating the government out of large sums. Millions of acres of heavily timbered pine land in Michigan, Wisconsin, and Minnesota and of Douglas-fir and redwood land in the Pacific Coast states had been taken under the settlement laws and yet not a "vestige of agriculture or cultivation" existed on them. On both the plundered lands and those acquired through fraudulent use of the settlement laws wasteful cutting prevailed. Only the choicest trees were taken; slightly defective logs and the tops and branches were left. As they rotted they harbored insects and diseases; fires ran through the dry slash, destroying the young trees and wildlife, transforming a living wilderness into a desert. Williamson hinted at the "disastrous climatic effect" which might follow from the removal of the forests, and suggested that members of Congress might well familiarize themselves with George P. Marsh's *Man and Nature,* published 13 years earlier.[50] Marsh deplored the urban and industrial waste that polluted the streams, the loss of forest soils that followed cutting, the damage livestock did to young trees, the transfer of forest lands from public to private ownership, and the lack of respect for forest property whether owned by the state or individuals. He termed the indiscriminate clearing of forests catastrophic. He anticipated the later "denudiacs," to use a hostile expression applied by the *Northwestern Lumberman* to those persons predicting the early exhaustion of growing timber, by saying that, except for Oregon, no state had a supply of standing timber greater than its prospective needs. Marsh in 1864 expressed sentiments which sound very modern today and remind one of another crusader, Rachel Carson, author of *The Silent Spring.* Marsh wrote:

> The ravages of man subvert the relations and destroy the balance which nature had established between her organic and her inorganic creations; and she avenges herself upon the intruder, by letting loose upon her defaced provinces destructive energies hitherto kept in check by organic forces ... which he has unwisely dispersed .... The earth is fast become an unfit home for its noblest inhabitant ....

It was such prescience that led Lewis Mumford to call Marsh "the fountainhead of the conservation movement."

Williamson reiterated his recommendation that all valuable pine lands be withdrawn from entry under the settlement laws and be made available for purchase only at their appraised value. He urged that the Secretary of the Interior be permitted to sell at a fair value the timber on public lands near mining activities and in unsurveyed areas where it was needed by settlers. His third recommendation may have come from reading Marsh: Congress should be asked to provide for "the care and custody" of the timberlands unfit for farming and for the perpetuation of the growth of timber on these lands after the virgin timber had been cut by "such rules and regulations as may be required to that end." Here is the first official proposal for the retention and development of national forests.[51]

Carl Schurz did not go quite as far as Williamson in his covering and summarizing report for the same year. He agreed that the timberlands should not be subject to entry under the settlement laws, that timberlands fit for agriculture "should be sold, if sold at all, only for cash and so graded in price as to make the purchaser pay for the value of the timber on the land." This, said Schurz, would make the settler provident in the disposal of the

[50] *GLO Annual Report, 1877,* pp. 24-25; David Lowenthal (ed.), *Man and Nature,* by George Perkins Marsh (Cambridge, Mass., 1965), pp. ix-xvii, 42-43, 257 ff.; and Lowenthal, *George Perkins Marsh. Versatile Vermonter* (New York, 1958), pp. 267-70.

[51] *GLO Report, 1877,* p. 25.

timber. A sufficient number of agents should be appointed to give adequate protection to the government's timberlands. They should be authorized to sell timber to meet local needs, whether for mining, building, or other purposes. He urged making it a penal offence to willfully, negligently, or carelessly set fire to growing timber on government land.[52]

The way of the reformer is not easy, as both Schurz and Williamson quickly discovered. Their revival of the use of timber agents and the vigorous warfare they conducted against trespassers met with little sympathy in Congress. Anything that would slow economic exploitation of the natural resources, no matter how wasteful that exploitation was, aroused opposition. The miners of Colorado and Nevada saw the timbers they needed for shoring up the ceiling of their mines costing them more, the railroads and their tie contractors saw themselves shut out from the public domain, the sawmill operator who had bought a winter's cutting from a small logger operating on the public lands feared he would not obtain logs he had counted on to keep his mill going. All were distressed and found it easy to accuse the representatives of the Department of the Interior of resorting to arbitrary action against the small, defenseless man, of taking steps that threatened the very basis of existence of thousands of people in the South, the Lake States, the mining communities, and the rapidly growing lumber industry on the West Coast.

These interests met with congressional sympathy when they sought to halt through legislation much of the protective work that was being done. Aaron Sargent of California led the attack in the Senate and was supported vindictively by James G. Blaine who hated Carl Schurz so venomously that he went against the general attitude of the Northeast which favored enforcing the timber regulations. Along with Sargent and Henry Teller of Colorado, Blaine argued strenuously for a measure that would prevent the enforcement of those regulations against actual settlers, no matter how large their operations were.[53] The debate waxed hot with Sargent and Teller accusing the New England, especially the Massachusetts, Senators of misunderstanding any and all legislation affecting western interests and taking an extraordinarily provincial position. Senators Hoar and Dawes of Massachusetts showed little inclination to defend Schurz but they did point out that all he had done was to enforce the law. Sargent declared "obsolete" the statute of March 2, 1831, on which enforcement was based; it provided for punishment of offences committed in cutting, destroying, or removing live oak or other timber or trees reserved for naval purposes. Blaine denied that there was any authority for the enforcement procedures. Hoar argued that the statute was not obsolete. As expounded by the Supreme Court in 1850 in *United States v. Briggs* it had been put into force in 1850-55, efforts to repeal it, made within the last 8 years, had failed, and it had been re-enacted in the Revised Statutes in 1873. The arrogance of Blaine, Sargent, and Teller and the fact that among those who defended Schurz and Williamson, only Stanley Matthews of Ohio was sufficiently familiar with the question to discuss it effectively, enabled the Senators from the public land states with timber to win.

In the House the discussion was on a fairer basis. There a number of Representatives were familiar with the intricacies of the question and they managed to make it clear that it was not the small settler who was being persecuted by the agents, as alleged, but rather great corpo-

[52] Secretary of the Interior, *Annual Report, 1877,* pp. xix-xx.

[53] *Cong. Record,* 45th Cong., 2d sess., March 12, 19, 1876, pp. 1684, 1722, 1860-74.

rations which were being sued—such as the Atchison, Topeka and Santa Fe Railroad for $100,000, the Colorado Central Railroad for $75,000, and the Boston and Colorado Smelting Company for $100,000.[54]

Timber and Stone Act of 1878

Nevertheless, three measures were adopted during the 2d session of the 45th Congress and in the 46th Congress that threatened to render ineffective efforts of the Department of the Interior and the General Land Office to protect the timberlands. The first was an amendment to a deficiency measure that would have ripped the heart out of the enforcement program by denying money for the payment of agents' salaries. It was the ripper amendment that aroused the bitterest fighting between those who hoped to halt all enforcement and those who either had respect for Schurz and Williamson, like Hoar and Dawes, or who, like Matthews and a few others, believed that as long as depredations upon the public lands were illegal the law required punishment of the guilty and should be enforced. The amendment, somewhat softened before adoption, provided that:

> Where wood and timber lands in the Territories of the United States are not surveyed and offered for sale in proper subdivisions convenient of access, no money herein appropriated shall be used to collect and charge for wood or timber cut on the public lands in the Territories ... for the use of actual settlers in the Territories, and not for export from the Territories ... where the timber grew. If any timber cut on the public lands shall be exported from the Territories it shall be liable to seizure.[55]

The second measure was the Timber and Stone Act of 1878. Since a large part of the remaining timberlands of the United States had never been offered for sale the only way they could be acquired was by use of the rarer forms of scrip or by perversion of the preemption and homestead laws. For some time Aaron Sargent and other West Coast members had been trying to get through Congress a bill that would allow individuals to purchase up to 160 acres of timberland for $2.50 an acre. Sargent pointed out that Commissioner Williamson had been urging the enactment of a measure that would provide for the sale of timberland but neglected to bring out that, along with sale, Williamson advocated appraisal of the timber before its sale and *reserving the land.* The land office officials said over and over again that their agents were not concerned with the cutting of timber on public lands by settlers for their own use in building cabins, or for fencing and fuel, nor had they any intention of seeking out and prosecuting the individual miner who was using small amounts of timber for cribbing, shoring, or fuel. The officials had never thought it necessary for the settlers or miners to buy such small amounts of timber they used. This should have been well known to all members of Congress from the West and probably was, but there were persons seeking a way to enable the timber interests to gain ownership of redwood, sugar pine, and Douglas-fir land without running the legal risk in employing dummy entrymen and abusing the laws. They were shrewd enough to make use of the appealing argument that the poor homesteader needed timber and that a measure should be enacted to enable him to acquire ownership of a small tract from which he could cut wood as he needed it. The defenders of Schurz and Williamson were not sufficiently aware of the fact that if homesteaders wanted such a measure it was really to enable them to sell the extra tract to large investors in timberlands as other homesteaders in the Great Plains were selling relinquishments

[54] *Cong. Record,* 45th Cong., 2d sess., March 6, 1878, p. 1536 and elsewhere.

[55] Act of April 30, 1878, 20 Stat. 46.

of their timber culture or preemption claims.

Those who believed in the enforcement of the timber laws were the least familiar with land legislation generally and therefore were not able to see the wide loopholes in the Timber and Stone Act and to guard against them. In the discussion in 1876 there was practically no support for Williamson's hesitant suggestion that the government should retain the land and sell the timber. Some members thought 160 acres of timberland would not provide economic units for lumbering, and since the tracts would be bought by wealthy millmen and speculators in any event, the land should be offered at auction in unlimited amounts. Sargent was opposed to selling in unlimited amounts because in his own state offered land had been gobbled up by speculators using scrip, warrants, and cash. California was still bedeviled by these large speculative holdings whose owners exacted high prices from actual settlers. The Senate voted 36-9 against offering the land at auction in unlimited amounts. Without division, the measure passed the Senate in 1876, but the House took no action on it.[56]

The Timber and Stone Act, when finally adopted in 1878, provided that unoffered, unappropriated, and unreserved surveyed public lands in California, Oregon, Nevada, and Washington Territory, valuable chiefly for timber (or stone) and unfit for agriculture (hitherto only open to entry under homestead and preemption laws or with special forms of scrip), could be purchased in quantities not in excess of 160 acres at the minimum price of $2.50 an acre. An applicant was required to swear, as were homesteaders and preemptors, that he "did not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title he might acquire from the Government . . . should inure" to others.

One of the arguments Aaron Sargent offered for the Timber and Stone Act was that it would make Californians honest by providing them with a way by which they could acquire small tracts of timberland without having to swear that they intended them for farms and residences.[57] In the light of all the false swearing being done in connection with homesteading and preempting land, it is difficult to believe that Sargent did not foresee that the Timber and Stone Act would be similarly abused. But whether he had his tongue in his cheek when he advocated the measure and opposed competitive bidding and wide open entry, he surely was aware that the measure would provide an easy way for the timberlands to go into private ownership.

A face-saving device was written into the Timber and Stone Act declaring that it is "unlawful to cut, or cause or procure to be cut, or wantonly destroy, any timber growing on any lands of the United States . . . or remove, or cause to be removed, any timber from said public lands, with intent to export or dispose of the same. . . ." [58] Miners, farmers, and ranchers were excluded from this section to the extent that they cut on public lands for their own improvements. The penalty for illegally cutting timber on the public lands or transportation of the same was made very light, a fine of $100 to $1,000 with no prison term. Furthermore, persons de-

[56] *Cong. Record*, 44th Cong., 1st sess., Feb. 16, 17, 21, 1876, pp. 1100-1107, 1142-46, 1186-91.

[57] This was Senator Ingalls' summary of a major argument of Sargent. *Ibid.*, pp. 1101, 1189.

[58] There was much opposition on the Pacific Coast to the export of logs for manufacture in other countries.

tected in trespass and being prosecuted under the Act of 1831 who were not cutting for export could relieve themselves of all liability by paying $2.50 an acre for land on which they had cut or taken timber. With redwood stumpage totaling 25,000 to 200,000 board feet an acre, the $2.50 price represented not a tenth of its value.[59] A final section of the Timber and Stone Act repealed that part of the Act of 1831 that allowed informers to have one half of the penalties and forfeitures. This repeal naturally reduced the flow of complaints and evidence of trespassing and increased the burden of the timber agents.

Further Deterrents to Protection and the Free Timber Act

The third measure that handicapped the Department of the Interior in its efforts to protect timber on public lands was the adoption in 1878 of the Free Timber or Timber Cutting Act. By this act residents of Colorado and Nevada and the Territories of Arizona, Dakota, Idaho, Montana, New Mexico, Utah, and Wyoming were permitted to cut timber for "agricultural, mining, or other domestic purposes" on mineral lands that were not subject to entry except for mining. The privilege was denied railroads which were doing all right without it. Reverting to the discredited and unworkable plan of Hendricks, Congress again placed responsibility for such enforcement as was called for on the local land officers. Again, as with the Timber and Stone Act, the law was vague, perhaps purposely so opening wide the door for cutting—but only on lands deemed to be mineral.[60]

A fourth measure to weaken respect for the Interior Department's efforts to protect public lands from depredations came in 1880 with an act of Congress that freed all persons against whom criminal suits or proceedings had been brought for taking timber from public lands, provided they purchased the land on which they had committed trespass. The original bill, reported without dissent from the House Committee on Public Lands would have freed them also from civil proceedings. Supporters of the measure declared, with something less than accuracy, that until Schurz became Secretary of the Interior, the government had permitted, even encouraged, people to treat the public lands as common property and had made practically no effort to prevent cutting of timber on them. They declared it was cruel and harsh to commence suddenly a system of prosecution with the use of spies and informers and blackmailing which infested all parts of the timber growing regions. They tried to give the impression that suits were brought against innocent purchasers of logs and lumber cut by others or that people needing wood for construction of homes, fencing, and fuel were being badgered by petty complaints, investigations, and threats of legal action.[61]

Edward S. Bragg of Wisconsin tried his best to disabuse members of Congress of the idea that the bill was designed to aid the small settler who was being harassed by bureaucratic officials. Bragg, Omar Con-

[59] Payment of $2.50 an acre did not entitle the trespasser to ownership of the land which he could buy, if he so wished, at the regular government price.

[60] Act of June 3, 1878, 20 Stat. 88. Over the course of years the registers and receivers had shown a marked tendency to tolerate or perhaps one should say wink at infractions of the law by the larger economic interests, as the investigating agents had reported on numerous occasions. To expect them "to ascertain from time to time whether any timber is being cut ... except for the purposes authorized" was absurd. It had long since been found that local officers with no incentive to search out illegal acts such as the investigating agents were expected to do, would not bend a finger to enforce the law.

[61] *Cong. Record*, 45th Cong., 2d sess., pp. 3327-28; *Senate Reports*, 45th Cong., 1st and 2d sess., Vol. 1 (Serial No. 1789), No. 122, p. 2.

ger of Michigan, and Jeremiah Dwight, a highly successful dealer in forest lands, led the effort to strip from the bill any provision that would excuse large commercial loggers and other men cutting timber on public lands on a commercial scale. Such persons, they maintained, deserved the punishment the law provided. The House was persuaded to amend the bill to restrict its benefits chiefly to persons making ordinary clearings for mining, agriculture, or domestic use or for improvements on land as bona fide settlers. The amendment, complained the bill's chief sponsor, "destroys" it. The amended measure, then approved, went to the Senate where the limitations of the House amendment were weakened.[62] In conference, the Senate's view prevailed. All criminal actions for depredations committed before March 1, 1879, on public lands and civil actions against bona fide settlers who entered the land on which the trespass had been committed were to be halted if the accused bought the land at the minimum price.[63] It was in Colorado, one of the states to which the Timber Cutting Act and the act giving freedom from prosecution for plundering were designed to apply, that perhaps the greatest abuses occurred. Commissioner Williamson summarized these abuses in 1880:

> In Colorado heavy depredations have been reported ... of the wanton and fearful destruction of the timber in the vicinity of Leadville. Sawmill men are represented as being so aggressive and greedy that they not only cut at will upon the public domain, but invade the claims of the miner .... Twenty-two saw-mills in that vicinity manufacturing ... 100,000 feet of lumber daily .... Hundreds of charcoal burners consume in the aggregate 1,200 cords of wood daily, and use chiefly the small trees ... in direct violation of the law. Fourteen smelters are reported as having on hand not less than 100,000 cords of wood .... Homesteads are entered for the sole purpose of stripping the timber therefrom ....[64]

The efforts of Schurz and Williamson to protect the public lands from large-scale depredations were not ended. What they were trying to do was to distinguish between the actual settler's or individual miner's need to cut timber from the public lands, which they always conceded, and large-scale commercial cutting for mining, smelting, or dimension lumber. The Timber Cutting Act forced them to broaden miners' and smelters' rights of cutting greatly but they gave way grudgingly. The instructions sent to registers and receivers interpreted the new act in a way that probably none who voted for it would have recognized. To preserve the young timber and undergrowth on the mineral lands, to protect the mountainsides from serious erosion and denudation, and to prevent floods from destroying agricultural lands in the valleys, the cutting of trees smaller than 8 inches in diameter was forbidden. Local officers were reminded that the Act of 1831 was still in operation on nonmineral lands and they were instructed to be on the alert

[62] *Cong. Record,* 46th Cong., 1st sess., June 9, 1879, p. 1877; *ibid.,* 46th Cong., 2d sess., pp. 1566, 3577-79, 3631-32, 4538-39; 21 Stat. 238, Act of June 15, 1880. Opponents of the bill called it "an act to license thieves," a bill to "condone crime and invite trespass and encourage theft." In this as in so many acts of very considerable importance the measure passed the Senate with little consideration and no division. Bragg, Conger, and Church were very angry with the measure as it emerged from the conference, feeling that the House members had given way unduly to the Senate. The House vote on the bill was 133-42. The negative votes were 4 from New England, 4 from New York, 9 from Pennsylvania, one from Ohio, 6 from Michigan, 5 from Wisconsin, 4 from Indiana, 7 from Illinois, one each from Missouri and Kansas. Not a negative vote was cast from the South or from the timbered states west of the Mississippi. John Ise, *The United States Forest Policy* (New Haven, 1924), p. 91, has a map showing the negative vote. The act of forgiving trespass committed before a certain date is reminiscent of the early preemption laws forgiving settlement on public lands before they were opened to sale.

[63] Act of June 15, 1880, 21 Stat., 238.

[64] *GLO Report, 1880,* p. 174.

by sending agents to determine any violation of the instructions.[65]

The West had largely frustrated the reformers in the Interior Department by making constant appeals in behalf of the right of actual settlers commonly spoken of as "poor settlers," to take small amounts of timber for fuel or construction. Actually what they were defending was the "right" of the smelters, the larger mining companies, and loggers operating on a large scale to cut as they pleased or needed. Since no member of Congress wished to oppose any action of benefit to actual settlers, and since western members succeeded in keeping out of discussion most of the information concerning the large operations against which the Department had moved, the issues became confused. Members became so befuddled that, with three exceptions, they were either disinterested or antagonistic to Hayes, Schurz, and Williamson and supported actions opposed by the officials of the Department of the Interior. When one reflects that minerals could be freely mined and taken, it is easier to understand why the West resented the government's efforts to make commercial operations pay for timber.[66]

The heads of Schurz and Williamson were bloody but unbowed. With reduced powers and inadequate appropriations (increased somewhat in 1878), they continued to maintain agents in the field—16 in 1879—and kept the Attorney General's office busy prosecuting cases of trespass and collecting fines. Williamson's summary of the charges brought, the fines imposed, the stumpage paid for, and the extent of cutting all suggest that trespass was no longer a matter of small operations extending around a "big 40" but very large operations involving some of the big lumbermen and millmen.

It must have been an inner urge that drove Williamson on when he had to admit that "The powers of the department are so enfeebled by the limited appropriations for detecting and punishing timber trespassers that but a tithe of the plunder and destruction of the timber on the public domain can be arrested." [67] Both Schurz and Williamson were strengthened in their determination to protect the Nation's timberlands by their respect for the way forests were managed abroad and their belief that the government should benefit from European experience in developing a program of forest management. Schurz brought to the President's attention the waste and destruction being committed on the redwood and sequoia trees in California, which scientists were urging should be preserved as the "grandest of primeval forests," mentioning especially the Mariposa Grove which many years later was to be incorporated into Yosemite Park.[68]

Both Schurz's and Williamson's reports for 1880, their last, expressed confidence that the activities of the timber agents were having a salutary effect in deterring trespassing, but Williamson's detailed account of the extent of depredations on the public lands offers little support for his optimism. Schurz pointed to the $248,795 which had been recovered for depredations on the public lands in the first 39 months of his administration and a nearly equal amount

[65] *GLO Report, 1878,* pp. 119-20.

[66] Elmer Ellis, *Henry Moore Teller, Defender of the West* (Caldwell, Idaho, 1941), pp. 97-99. Ellis correctly stresses that there was no legal way timber could be cut on public land except by preemptioners making homes but neglects the fact that the Timber Cutting Act sanctioned wholesale cutting by which public lands could be stripped of their value at no return to the government. He brings out an amusing bit that N. P. Hill, against whose smelter the $100,000 suit had been brought by Williamson's agents and who was defended by Teller, later became the Colorado leader of the half-breeds supporting Hayes and Garfield against the Conkling-Teller-Grant faction (p. 120).

[67] *GLO Report,* 1879, p. 187.

[68] Secretary of the Interior, *Annual Report, 1879,* pp. 26-30.

for which judgment had been obtained but which was not yet collected, and he showed that the total was far greater than the appropriations for investigating agents. At the outset of Schurz's term as Secretary, the export trade in timber cut on public lands from the Gulf ports, the Columbia River, and Puget Sound was enormous. By 1880 it had been materially reduced. He warned that the evil would spring up again if efforts to arrest it were in the least relaxed. Schurz reiterated his earlier recommendations that the government be authorized to sell timber "at reasonable, perhaps even at merely nominal, rates to supply all domestic needs and all the wants of local business enterprise, as well as of commerce" and that all timber sales be so controlled "as to preserve the necessary proportion of the forests on public lands from waste and indiscriminate destruction."[69]

Schurz and Williamson were lonely reformers calling for the protection of the public lands. Against them was arrayed an almost solid representation in Congress from the states, West and South, where there were extensive areas of public timberlands; and only three Senators defended their policies.[70] Some of the bitterest attacks upon Schurz and Williamson came from members of their own party.

Era for Decision

When Chester A. Arthur replaced Garfield in the White House and Henry M. Teller became Secretary of the Interior in 1881, there was a marked relaxation in the Department's attitude toward the right of railroads, under the Right-of-way Act of 1876, to take timber for a distance of 50 miles from their lines and an inclination to patent land to the railroads, under what some thought was questionable procedure.[71] However, Teller retained as Land Commissioner Noah McFarland who had been appointed by Garfield and he did not relax efforts to prevent illegal appropriation of timber from public lands. Congress became more generous in voting funds for investigation, increasing the amount from $5,000 in 1877 to $75,000 in 1882. This made possible the appointment of more field agents and the accumulation of more evidence of trespasses for presentation to the courts. The results were disheartening. It was becoming increasingly apparent, said McFarland, that almost every restriction and limitation in the public land system was threatened by a "flood-tide of illegal appropriations" that was sweeping over the West and threatening to engulf the entire public domain. The time had come, he said, when either the United States must make a "complete radical change in public land laws and administration, or some better means must be found for enforcing the present laws." The enlarged appropriation for investigating agents was still altogether inadequate, as $150,000 would be, but he hesitated to ask for more. The evidence McFarland presented in a special report of 1883, showing widespread violations of the land laws was most depressing. Teller sent it along to the President, ignoring the violations in Colorado but calling attention to abuses in California and Dakota Territory.[72]

It is possible to show statistically something of the size of the questionable operations being conducted on the public lands

[69] Secretary of the Interior, *Annual Report, 1880,* pp. 26-37. Schurz also stressed the need for a law against the willful setting of fires upon public timberland.

[70] Schurz's order of 1878 debarring 127 land attorneys from practicing before the Department for questionable practices did little to win political support for him. Harold Hathaway Dunham, *Government Handout, A Study in the Administration of the Public Lands, 1875-1891* (New York, 1941), p. 139.

[71] Dunham, *Government Handout,* pp. 10 ff.

[72] *S. Ex. Doc.,* 47th Cong., 2d sess., Vol. 3 (Serial No. 2076), No. 61, pp. 2, 4-5 ff.

TIMBER TRESPASS CASES

	1881	1882	1883	1884
Trespass cases	322	817	987	627
Board feet	79,936,000	222,734,583	301,140,487	270,225,521
Logs and trees	28,255	186,484	1,337,231	1,144,329
Cords of wood	128,394	79,139	91,669	198,325
Market value	$225,472	----------	$8,144,658	----------
Stumpage value	----------	$511,069	$1,709,824	$1,093,178
Civil and/or criminal suits instituted	----------	289	539	144

Compiled from GLO *Reports*, 1881–1884.

and the number of trespass cases brought against the accused parties.

Teller, as Senator from Colorado, had been devastating in his criticism of the activities of the timber agents in 1877 and 1878 and had a major part in the adoption of the Timber Cutting Act. As Secretary of the Interior, responsible for supporting his Land Commissioner he made no allusion in his reports to law enforcement, seemingly being content to leave the matter in the hands of the Commissioner. On the other hand, in the year before Teller become Secretary, McFarland had reported that the principal trespassing in Colorado had been done by mill owners and railroad contractors working up ties and bridge timbers for lines both within and outside the state, and that a large number of trespass cases were on trial at Leadville, while Secretary Teller's subsequent reports made no mention whatever of cases of trespass or trials in Colorado.

Teller might well have thought that his chickens were coming home to roost for not only did his Timber Cutting Act not prove as satisfactory as he and others thought it would be, but the Timber and Stone Act also caused his Department trouble. The number of entries increased from 363 for 41,977 acres in 1881 to 2,101 entries for 297,735 acres in 1883. In 1883 McFarland reported that the limitations and restrictions of the act were being "flagrantly violated" and that "much of the most valuable timber land" on the Pacific Coast was being taken up by "home and foreign companies and capitalists through the medium of entry made by persons hired for that purpose." Anyone familiar with the working of the land system at the time the act was adopted in 1878 could have foretold this result. McFarland was sufficiently indignant at the misuse of the law that he suspended all entries under the act and called for an investigation that might lead to the cancellation of illegal entries and the prosecution of the guilty parties. In 1884, when 2,392 entries for 339,419 acres were made McFarland came out for repeal. Under the Timber and Stone Act lands were passing in bulk to a few large operators. Such preventative measures as he had tried were wholly inadequate.

> The requirements of the law are slight and easily evaded, and evidence of fraudulent proceedings rest so much within the knowledge of interested parties that specific testimony can rarely be obtained. Thus, while results are observable, easily demonstrated, and of common notoriety, the processes by which they are reached are difficult to trace in a legal proceeding.[73]

Teller apparently preferred to evade responsibility for his subordinate's actions or remarks on the Timber and Stone Act, for he neither summarized them in his report nor made any allusion to them. On the

[73] *GLO Report, 1884*, p. 8.

other hand he adopted completely McFarland's recommendations for the repeal of the Preemption and Timber Culture Acts.[74]

When William A. J. Sparks took command of the Land Office in 1885, the West had occasion to recall Rehoboam's adjuration, "My father hath chastised you with whips, but I will chastise you with scorpions." If Schurz, Williamson, and McFarland had been strict, timber depredators and persons trying to take advantage of the Federal land laws found Sparks much worse. "Depredations upon public timber are universal, flagrant and limitless," reported Sparks in his first accounting. Twenty-three special agents reported 396 cases of trespass involving timber worth nearly $3 million. Whole ranges of pine timber had been cut over, steam sawmills promiscuously established on public lands, and large operators were employing hundreds, in some cases even thousands, of men cutting timber on public lands. Unlike his predecessors, Sparks mentioned by name some of the largest of the companies accused of violating the law, including the powerful Sierra Lumber Company of California, against which a suit was pending for the recovery of the value of 60 million feet of lumber taken from government land, and the Montana Improvement Company, essentially a subsidiary of the Northern Pacific Railroad.[75] In 1886, 1,218 cases of trespass were brought involving over a half billion feet of lumber, 153,743 logs, 239,397 cords of wood, 2,265,000 railroad ties, together worth $9,339,678. Succeeding reports suggest that Sparks had begun no mere flurry of investigation but was out to press charges as rapidly and as far as his funds permitted.

Sparks could find no good in the Timber and Stone Act which, he maintained, was being used in California, Oregon, and Washington Territory to acquire land for capitalists at $2.50 an acre that was worth $10 to $25 an acre for the standing trees. Misuse of the act to acquire redwood lands of northern California was begun in 1878 on a wholesale scale by a group of California and Wisconsin speculators in timberland who ultimately brought into their enterprise several Scotch capitalists. As the Secretary of the Interior brought out in 1888, the group proposed to acquire the best of the redwood land in Humboldt County through capital provided by the Scotch investors in the California Redwood Company. The local promoters agreed to pay $5 for recruiting men who would enter already selected quarter-sections for them and to pay the entrymen $50 each upon the completion of the entry and execution of the deed. Residents of a sailors' boarding house, among others, were induced to make such entries, taking the usual oath that the entries were not being made for the benefit of others. In one day 349 deeds from these entrymen were filed for registration which, one might think, would have excited suspicion, but apparently no concern had been felt in Washington. The Scotch capitalists who paid $7 an acre for the land proceeded to value the lands at $10,500,000 and to float a debenture issue of $1,500,000. Rumors of fraud in such large acquisitions

[74] Secretary of the Interior, *Annual Report, 1883,* pp. xxx-xxxiii, and *1884,* pp. xiv-xvii.

[75] The Northern Pacific Railroad held 51 percent of the stock of the Montana Improvement Company. Among the charges brought against the company were: it claimed control of all the timber on the alternate section lands of the railroad from Miles City, Montana, to Wallula, Washington Territory and all on the government reserved sections; though the railroad was completed in the vicinity of the Flathead Reservation on which it had temporary cutting privileges it was continuing to cut, operating its mill night and day; its policies prevented competitors from engaging in the lumber industry and were threatening to wipe them out, including the charges of the Northern Pacific Railroad for the carloads of company lumber, $23 each, whereas competitors had to pay $47 each. *Decisions of the Department of the Interior and General Land Office Relating to the Public Lands* (73 vols., 1881-1966), 4:65 ff.

finally reached Washington and an agent was sent out to investigate. Although he found sufficient evidence to present to a grand jury to secure indictments against those who had participated, the agent was dismissed and patents were issued for the entries. Later, steps were taken to forfeit some of the patents and some lands were recovered. The entire episode brought no comfort to the Scotch capitalists nor to their American representatives when the scandal broke. Nor could Sparks avoid the mortification of knowing that it had taken nearly 4 years for his own officers to ferret out the scandal and bring the persons implicated to justice.[76]

In 1887 Sparks set the maximum value of land being acquired under the Timber and Stone Act at $50 an acre. He was apprehensive that the rapid alienation of public timbered lands, especially land at the heads of streams and on mountainsides, would destroy the natural watersheds and reduce agricultural districts to a desert condition. It will be noted that Sparks was picking up the arguments of Schurz in behalf of conservation.[77]

Secretary Lamar put a precise finger on the weakness of the Timber Cutting Act. "Individual avarice and corporate greed . . . vie in accepting the bounty, and unless checked by wholesome modifications of the law, will soon cause all the mineral lands to be stripped of their timber." That which is "every one's property is no one's care," and "extravagant waste is the consequence of negligent legislation." Lamar recommended an amendment to the law that would provide for the sale of the timber on the mineral lands, which was about what Schurz had struggled for, though Lamar would have left open to true settlers and small miners the privilege of free lumber.[78]

Few in the West could have regretted the passing of the first Cleveland administration, particularly its Commissioner of the General Land Office. As a result of the campaign of villification directed against him by the newspapers, many westerners had come to think of Sparks as an enemy of their section. He had questioned the honesty of most people making homestead, preemption, timber culture, and timber and stone entries, had held up patents for investigation, had filled the courts with cases involving trespass and brought to a halt the operation of mining, smelting and lumbering operations employing many people. If, however, westerners had reflected on the role of the Commissioners, at least since Burdett in the Grant administration, they would have recalled that all of them had done yeomen service in trying to enforce the laws against infractions by powerful groups and capitalists. All had made important recommendations for improvements in both administration and in legislation to make the system more satisfactory to the West, including the right to sell timber or timberland, and that all had urged strongly the need of better salaries to attract abler people into the responsible offices of the Department. All would have agreed with the judgment of Harold Dunham that the greatest deterrent to effective administration of the public land

[76] W. Turrentine Jackson, *The Enterprising Scot. Investors in the American West After 1873* (Edinburgh, Scotland, 1968) , pp. 223-31.

[77] *GLO Report, 1885,* pp. 73, 306, 315; *1886,* pp. 442-53; *1887,* pp. 87, 467-87; *1888,* p. 55. Sparks was forced to resign because his superior, Secretary Lamar, was not willing to push enforcement procedures as fast as Sparks wished. In 1888 Sparks' successor could report the denouement of the California Redwood cases. The records of Humboldt County showed that 57,000 acres entered under the Timber and Stone Act, had been conveyed to the Humboldt Redwood Company, composed of Scotch capitalists and their American associates, and were now valued at $11 million. Some 90 entries were held for cancellation, hearings were pending on others, and proceedings had been instituted to set aside patents on 175.

[78] Secretary of the Interior, *Annual Report, 1885,* p. 40.

laws was the extraordinarily poor financial support Congress gave to this most important branch of the government which had jurisdiction over the vast resources of the country. They would also have agreed that Congress had been exceedingly careless in drafting legislation affecting the public lands, had left great loopholes for fraud and abuse of the laws, and had been exceedingly slow in providing remedial legislation.[79]

While deploring his arbitrary action in ordering the suspension of all entries for further investigation and his suspicious attitude towards all wishing to file applications for land, Sparks' successors followed up his policy toward depredations of the public lands. They asked for more funds for investigating agents, pressed indictments and suits for the recovery of stolen timber or its stumpage value, and urged the repeal of the Timber and Stone Act. The Timber Cutting Act was said by the Acting Commissioner in 1889 "to have opened the flood-gate to the unlawful procurement of timber from public lands and has resulted in the destruction of some of the finest forests in the world." A Federal judge characterized this act by saying it was "very loosely and unskillfully drawn, and abounds in unnecessary and indefinite phrases and clauses of the and-so-forth" variety that made it susceptible to much abuse.[80]

President Harrison's Land Commissioner, Lewis A. Groff, after reading over the reports of the office since 1881, noted the ever increasing destruction of public forests without authority and without anything more than token compensation being paid to the government for the plundering. He came to two conclusions: (1) publicly owned timber was being rapidly exhausted, and (2) existing laws were wholly inadequate to protect the public lands from unlawful appropriation. He was aware of the demands by the emerging conservation movement for the temporary withdrawal of all timberlands from any form of entry to allow for a careful study of possible future policies toward them and of the proposal to have the Army assigned to protect the public forests from further plundering, but did not comment on them. Instead, he recommended the repeal of, or the enactment of strict limitations in, the Timber Cutting and Timber and Stone Acts so that mountainous land needed for watershed protection would be retained in government hands and that timber in mining districts would be cut only for actual needs. The Commissioner expressed his thoughts so awkwardly that one has to dig for meaning in his reports but he seemed to be saying what his predecessors in the Land Office had been saying for years: timber in the mining districts should not be cut in the wholesale fashion it had in the past. However, none of the Commissioners, including Groff, came up with any concrete suggestion

[79] Dunham, *Government Handout,* pp. 124 ff. Dunham (pp. 142-43) brings out the erosion of the better employees of the Land Office and their employment at much better salaries by railroads, corporations and law firms. Former Commissioner Williamson, for example, was taken on by the Atlantic and Pacific Railroad at a salary of $10,000 whereas his salary as Commissioner had been $4,000. A. T. Britton became one of the most successful lawyers practicing before the Department and Henry N. Copp became the prolific writer of guidebooks for settlers and miners; his *Copp's Land Reporter* was indispensable for attorneys dealing in public land matters. Equally serious was the fact that staff members of the Land Office had been able to transfer to other departments of the government at salary increases of $700 and $800. In 1881 the salaries of bureau chiefs in Interior ranged from $3,500 for the Commissioner of Indian Affairs, $4,000 for the Commissioner of the General Land Office, $4,500 for the Commissioner of Patents and the Commissioner of Railroads, who had the smallest staff, $5,000 for the heads of the Pension and Census Bureaus and $6,000 for the head of the Geological Survey. The latter was an acknowledgement of the great skill and distinguished position of Major John W. Powell. *Official Register of the United States* (2 vols., Washington, 1881), 1: *passim.*

[80] *GLO Report, 1889,* pp. 58-60.

as to how such a policy could be made to function. Though his views on the Timber Cutting Act were not clearly stated, Groff was convinced that the Timber and Stone Act should be repealed.[81] He suggested that if public timberlands were to be retained by the Federal government, state and territorial legislatures might be invited to draft plans looking to the protection of the timber "from waste and destruction or from being removed or monopolized for purely speculative ends." His proposal included "concurrent action of State and Territorial legislatures" but does not appear to have included joint action with the Federal government. The West always preferred local control to Federal administration.[82]

The West was neither ready for the repeal of the Timber and Stone Act nor for the modification of the Timber Cutting Act. In fact it wanted legislation that would relax even more the controls on the public lands and extend the privileges of the Timber Cutting Act to lands not classified as mineral. Furthermore, when the outcry in the older states against the flagrant and widespread misuse of the Timber Culture Act became so strong as to impel Congress to provide for its repeal on March 3, 1891, Congress included in it a clause that made more difficult the enforcement of the Timber Cutting Act and prosecutions for cutting on public lands. This was done by providing that in any civil or criminal action for trespass it should be a defense for the defendant to show that he was a resident who had cut the timber for farming, mining, manufacturing, or domestic purposes and that it had not been transported out of the state. The act extended the free timber privilege to Colorado, Montana, Idaho, North and South Dakota, Wyoming, Nevada, and the Territory of Utah and 2 years later its provisions were extended to New Mexico and Arizona. Residents were privileged to cut timber free of cost from both mineral and nonmineral land on any scale they wished for purposes of sale or other traffic, as long as it was not destined for export from the state or territory of origin. Actual settlers, miners, and farmers could procure timber they needed without permit. No provision was made for compensating the government for the millions of feet of lumber great mining and lumbering companies took from the public lands in the next few years.[83] Though the futility of the fight against timber depredations in the face of this and earlier legislation was apparent and admitted, Congress went on spending annually $100,000 or more for the maintenance of investigating agents and $100,000 to protect the public lands from illegal entry in the hopeless task of trying to make people stop utilizing the loopholes in the legislation for which Congress itself was responsible. Radical reformers thought it

[81] *GLO Report, 1890,* pp. 80-86. Two years later the Timber and Stone Act was extended to make it apply to all the public land states.

[82] *Ibid.,* p. 81.

[83] *GLO Report, 1891,* p. 90, *H. Doc.,* 55th Cong., 2d sess., Vol. 12, No. 5 (Serial No. 3640), pp. 75-79. Commissioner Binger Hermann called the free timber provision of the Act of 1891 "fatally defective because it provided no return to the government and rankly discriminated in favor of those lumbermen who cut on public lands, as against those cutting on private lands. He reported in 1897 that nearly 300 permits had been issued for a total cut of 300 million feet, the majority being to "small sawmill operators" for 500,000 board feet, but great corporations such as the Big Blackfoot Milling Company, the Bitter Root Development Company and the Anaconda Mining Company, each of Montana, had gained far larger privileges. Other large commercial operations on the public lands are depicted by Hermann.

might better have instituted more careful limitations in its timber laws.[84]

One may conclude that the hopelessness of effectively protecting the public timberlands by the use of a small army of investigating agents who were ostracized by local society, upbraided by the local press and by the Representatives and Senators of the West, and the fact that their enforcement efforts were nullified by hostile juries, contributed to the realization at least among scientists that only through a positive program of Federal forest land management could a part of the remaining public forests be both withheld and protected for future use.

[84] *GLO Report, 1897,* pp. 73-78. Reading the debates in Congress on public land questions in the Harrison-Cleveland period leads one to the conclusion that Harrison's Commissioner of the General Land Office, Lewis A. Groff, in relaxing the previous tight administration and enforcement of the laws, reflected much more the western attitude than did Cleveland's new Commissioner who in 1893 again began to stress the need for more vigorous prosecution of the laws against timber depredations.

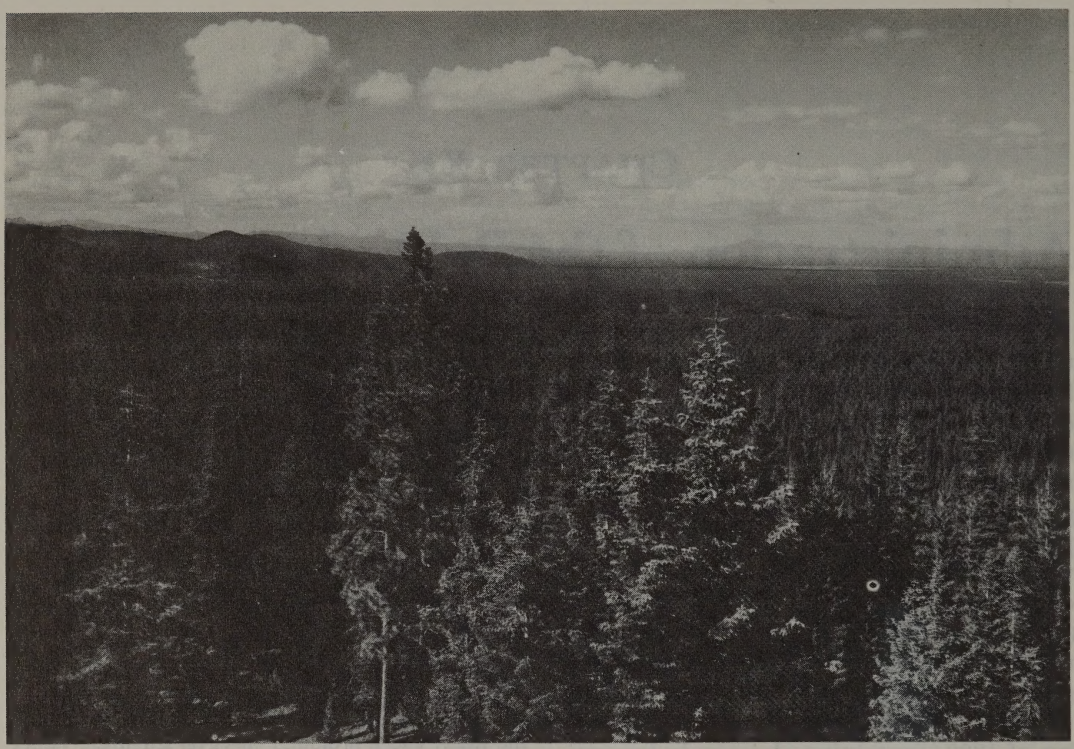
CHAPTER XX

Administration of the Public Forest Lands

Conservation, one of America's great popular reform movements, was to deeply affect Federal land and forest policies. Concern about the future supply and cost of timber arose with the rapid depletion and anticipated early exhaustion of the better grades of timber in the older states, rising prices, and the fear that soon dependence would have to be placed on the yellow pine of the South or even on the Douglas-fir of the Pacific Coast states, which freight would make expensive. Professor Charles S. Sargent of Harvard was to make a report on the *Forests of North America* for the Census of 1880, containing alarmingly low estimates of the remaining stands of white pine in the Lake States. Gradually Americans became aware of the importance of maintaining forest cover to prevent floods, they became interested in preserving the forests for their recreational and aesthetic values, and began to appreciate the results of European forest management programs and the need for similar policies to be inaugurated in the United States.[1]

The press increased its attention to forest matters, the Timber Culture Act was adopted, Arbor Day was instituted, and the American Association for the Advancement of Science presented a memorial to Congress in 1872 that led, 3 years later, to the appointment of an advisor on forest policy in the Department of Agriculture. In 1876 the American Forestry Association was organized and subsequently forestry congresses were held; a number of state forestry societies and commissions, and

[1] Conservation, as viewed in this context, was a product of the growing fear in the 1870's that the swift depletion of the white pine, the principal construction timber in the Northeast and the Lake States, would soon compel the use of inferior timber trees or dependence on other countries for supplies. Those fearing early exhaustion had their views documented, albeit prematurely and with marked exaggeration, by the part they played in the preparation of the *Report of the Forests of North America*, as a volume in the *Tenth Census of the United States*, wherein it was estimated that in 11 or 12 years the supply would be gone if the current rate of cutting were maintained. Though discredited by the commercial journals of the lumber trade, notably the *Northwestern Lumberman*, the *Report* had a profound effect on stumpage values and in creating concern about timber supplies and other natural resources. The movement antedated Gifford Pinchot's concern for the scientific utilization of the natural resources and the crusade which grew out of his activities. I have discussed this early appearance of a concern for conservation in my *Wisconsin Pine Lands of Cornell University. A Study in Land Policy and Absentee Ownership* (Ithaca, N. Y., 1943), pp. 221 ff. The history of conservation has attracted the attention of numerous participants in the movement and many historians and political scientists. In addition to the works of John Ise, Jenks Cameron, and E. Louise Peffer, previously cited, the following are helpful, though space does not permit a full listing: Charles R. Van Hise, *The Conservation of Natural Resources in the United States* (New York, 1910); Samuel P. Hays, *Conservation and the Gospel of Efficiency; The Progressive Conservation Movement, 1890–1920* (Cambridge, Mass., 1959); David Cushman Coyle, *Conservation. An American Story of Conflict and Accomplishment* (New Brunswick, 1957); Elmo R. Richardson, *The Politics of Conservation: Crusades and Controversies, 1897–1913* (Berkeley, 1962); J. Leonard Bates, "Fulfilling American Democracy: The Conservation Movement, 1907–1921," *Mississippi Valley Historical Review* XLIV (June 1957), 29–57; Donald C. Swain, *Federal Conservation Policy, 1921–1933* (Berkeley, Calif., 1963).



Winema National Forest, Oregon

U.S. Forest Service

boards of forestry were created (New York's was the leader); and a spate of books and articles on forestry, condemning the wasteful and destructive depredations of lumbermen on the public lands, was poured forth.

The efforts of Carl Schurz, John A. Williamson, and William A. J. Sparks to eliminate or at least reduce illegal cutting of timber on the public lands and the political controversies revolving around their activities alerted many people to the depredations of those who considered the public lands wide open to their use without regard to the public interest or the future needs of the government for revenue. The courageous but not always well directed efforts of these three officials of Interior were paralleled by activities of a distinguished group of scientists, including botanists, arboriculturists, geologists, and chemists who were becoming concerned about the rapid depletion of the forests of the United States and who were familiar with forestry practices abroad. Among these scientists were Wolcott Gibbs, chemist, director of the Lawrence Scientific School and president of the National Academy of Science; Franklin B. Hough, an Army surgeon who became deeply interested in forestry; Joseph T. Rothrock, physician and botanist who, like Hough, was drawn into forestry, and played a major role in state forest policy in Pennsylvania; Charles S. Sargent; and Bernard E. Fernow. These men, with Gifford Pinchot, who was of a younger generation, all emphasized the necessity of utilizing less wastefully the timber resources of the country.

Through their combined efforts an appropriation of $2,000 was made in 1876 to the Department of Agriculture for a study of the production and consumption of forest products, the probable supply, means of preserving and renewing the forests, and the influence of forests on climate. Franklin B. Hough who had been in charge of the New York State Censuses of 1855 and 1865 and was superintendent of the United States Census of 1870 was placed in charge of this task, out of which came his two detailed *Reports on Forestry*. Hough was kept on by the Department in 1881 in the Division of Forestry and in 1883 in the office of Investigation of Forestry. In this way was begun the Division of Forestry, of which Cleveland made Bernard Fernow head in 1885. A forester trained in the best German tradition, Fernow came to the United States in 1876. He was employed by a company concerned with the use of wood in industry and took a leading part in the organization of the American Forestry Congress and other meetings of those concerned with the welfare of the forests. His appointment to replace Hough in the Division of Forestry was in line with that department's policy of using professionals wherever possible. Between 1886 and 1898 Fernow wrote many articles and some notable books, and delivered numerous addresses before forestry and scientific agencies concerning the problems, needs, and objectives of professional forestry. His biographer shows that he had a part in influencing John W. Noble, Secretary of the Interior, to suggest the addition of Section 24 to the Act of 1891. This section provided for the creation of forest reserves and led to the Act of 1897, authorizing the establishment of an administrative organization to manage the reserves. Fernow ranks among the great figures of forestry, though he may have been more theoretical than practical. In accepting the directorship of the State School of Forestry at Cornell, Fernow made way for Gifford Pinchot who succeeded him in 1898 as head of the Division of Forestry in the Department of Agriculture.[2]

As a result of this ferment of discussion of forest practices Congress was persuaded to add to the General Revision Act of March 3, 1891, a section we may call the Forest Reservation Act. Among its other provisions the Revision Act repealed the Preemption and Timber Culture Acts but without cutting off any rights already established under them even if not yet either carried to patent or applied for. The act also allowed patent of timber culture entries after 4 years of compliance with the law instead of 8. In addition, Congress, still troubled about prosecutions for depredations upon the public timberlands, declared that persons against whom action was taken need only offer for defense that the timber so cut was for use in the state or territory of origin for "agricultural, mining, manufacturing or domestic purposes, and had not been removed therefrom. . . ." It is a commentary upon the way legislation was achieved in the 19th century that in an act calculated either to forgive or to ease the defense of trespassers on government timberland Congress should add in the final Section 24, the Forest Reservation amendment, its first step in the conservation of the natural resources of the country. This part of the act authorized the President "to set apart and reserve, in any State or Territory having public land bearing forests, in [sic] any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial

[2] I have placed heavy reliance on Andrew Denny Rodgers III, *Bernard Eduard Fernow; A Story of North American Forestry* (Princeton, 1951), *passim*, without neglecting other accounts such as Ise, *United States Forest Policy;* Cameron, *Development of Governmental Forest Control in the United States;* Pinchot, *Breaking New Ground;* and Darrell H. Smith, *The Forest Service. Its History, Activities and Organization* (Washington, 1930).

value or not, as public reservations. . . ." [3]

A memorial of the American Forestry Association of October 1889, throws much light on the background of this amendment. The AFA petitioned Congress for legislation to require the withdrawal from sale of distinctly forest land, as recommended by the Secretaries of the Interior for the past three administrations, to give the forest lands protection, and to authorize the President to appoint a commission to determine what "regions . . . should be held permanently in forest" and to present a plan for a national forest administration. The association had little reason to approve the unrestricted free cutting which the Revision Act of 1891 tolerated, but could hope that the authority it gave for making withdrawals would be used to save the best of the remaining public timberlands for controlled management.[4]

Sporadic congressional interest in preserving areas of superlative natural beauty and uniqueness had already caused several areas to be withheld from private ownership. Four sections of the Hot Springs of Arkansas had been set aside for "future disposal" in 1832; in 1864 the "Cleft" or "Gorge" and the headwaters of the Merced River "known as the Yo-Semite Valley" and the "Mariposa Big Tree Grove" of giant sequoias had been granted to California to be held "inalienable for all time" for "public use, resort, and recreation." In 1872 2 million acres on the Upper Yellowstone in Wyoming Territory had been reserved from "settlement, occupancy, or sale," and dedicated "as a public park or pleasuring ground for the benefit and enjoyment of the people." In 1875 the public lands on Mackinac Island in Michigan had been set aside as a "National public park or grounds for health, comfort, and pleasure, for the benefit and enjoyment of the people", but this park was not to survive. Finally in 1890 two acts withdrew from all forms of entry some 2 million acres in the mountains back of the Yosemite Valley and other land in present Sequoia National Park—the former area was to be "set apart as reserved forest lands" and the latter was "dedicated and set apart as a public park or pleasure ground. . . ." [5] The preamble



Old Faithful Geyser, Yellowstone National Park
National Park Service

[3] 26 Stat. 1095. In the discussion in the House it was brought out that the Anaconda Copper mine in Montana used as much as 30 million feet of squared timber worth $300,000 yearly, presumably all cut from public lands, and judging by the discussion such use was to be tolerated under the amendment. *Cong. Record*, 51st Cong., 1st sess., p. 10091.

[4] *Cong. Record*, 51st Cong., 1st sess., p. 2539.

[5] Act of April 20, 1832, 4 Stat. 405; Act of June 30, 1864, 13 Stat. 325; Act of March 1, 1872, 17 Stat. 32; Act of March 3, 1875, 18 Stat. 517; Acts of Sept. 25 and Oct. 1, 1890, 26 Stat. 478, 651. As John Ise in *Our National Park Policy* (Baltimore, 1961), has said, from 1890 to 1906 "Yosemite was a moun-

to the act providing for the establishment of what became Sequoia National Park stated: "the rapid destruction of timber and ornamental trees in various parts of the United States, some of which are the wonders of the world on account of their size and the limited number growing, makes it a matter of importance that at least some of said forests should be preserved." Out of this legislation developed three national parks, Yosemite, Sequoia, and General Grant, later a part of Kings Canyon. One other park was created in the 19th century, Mount Rainier in Washington.[6]

PRESENT ACREAGE OF NATIONAL PARKS RESERVED OR CREATED BEFORE 1900

Hot Springs	989
Yellowstone	2,213,206
Yosemite	758,313
Kings Canyon	453,768
Sequoia	385,413
Mount Rainier	241,781

From National Park Service, *Parks for America* (1964).

For a country whose policy from the outset had been to pass the public lands into private ownership as speedily as possible, this series of acts to preserve areas of considerable size in public ownership was a remarkable change in attitude. Together with the adoption of the Forest Reservation Act they mark a turning point in public land policy.

Selection of the forest lands to be withdrawn in the absence of any very informed knowledge or experts to make recommendations was a hit or miss proposition at first and left many problems to be solved in the future, when trained and skillful personnel became available to examine the reserves carefully and to advise modifications, eliminations, and additions. Some of the early reserves were but lightly forested. They were requested by towns and cities whose water supply came from mountain reservoirs that were being silted up because their watersheds were grazed too closely.

Benjamin Harrison took prompt action under the Forest Reservation Act, issuing his first proclamation for the withdrawal of 1,239,040 acres north and east of the Yellowstone National Park for the Yellowstone National Park Timberland Reserve in less than a month after signing the measure.[7] There followed in the remaining years of the Harrison administration 14 additional proclamations creating the White River, South Platte, Battlement Mesa, Plum Creek, and Pike's Peak Reserves in Colorado, the Pecos River Reserve in New Mexico, the Bull Run Reserve in Oregon, the San Gabriel, the Sierra Forest, the San Bernardino, and the Trabuco Canyon Reserves in California and the Grand Canyon Reserve in Arizona, containing together an estimated 13,053,440 acres.[8]

S. W. Lamoreaux, Cleveland's new Land Commissioner, maintained in 1893 that the reserves had generally been established to protect the watersheds of rivers, that the reservations were favored by the people directly affected and that much of the opposition to them would disappear when plans were worked out to permit people to use the timber. He also stressed the need for protection against fires and trespass, and regretted that no funds had been appropriated for this purpose. Cleveland pro-

tain national park surrounding a badly managed state park in the Valley." In 1905 the state park was receded to the United States and consolidated the following year into the Yosemite National Park.

[6] Ise, *Our National Park Policy*, pp. 121–22. S. A. D. Puter and Horace Stevens, *Looters of the Public Domain* (Portland, 1908).

[7] The original proclamation was amended by a second proclamation of Sept. 10, 1891, 26 Stat. 1565 and 27 Stat. 989.

[8] The proclamations are in 26 and 27 Stat., and the estimated acreage is summarized in *GLO Annual Report, 1893*, p. 78.

claimed two additional forest reserves in Oregon on September 28, 1893, with a combined area of 4,501,300 acres but was unwilling to do more until Congress provided some form of protection and control for the existing forests.[9]

National Forest Commission

The first truly professional aid in planning for withdrawals came in 1896 with the appointment of the National Forest Commission. The National Academy of Sciences was asked by Hoke Smith, Secretary of the Interior (who had been stimulated to make the inquiry), what legislation, if any, was necessary to make effective the reservation policy. In response, it chose a commission of seven to study and report. Included were Charles S. Sargent, who has previously been mentioned as in charge of the Tenth Census report on the *Forests of North America;* William H. Brewer, a distinguished Yale botanist; Alexander Agassiz, mine administrator, zoologist, and patron of science; Wolcott Gibbs, president of the National Academy; and, most important for the future of forestry, Gifford Pinchot. With an appropriation of $25,000 the commission toured the forest regions of the West for 3 months and through Chairman Sargent orally recommended the establishment of 13 additional forests in Washington, California, Wyoming, Montana, Utah, South Dakota, and Idaho.

The "Report of the National Forestry Committee of the National Academy of Sciences Upon the Inauguration of a Forest Policy for the Forested Lands of the United States" is a brilliant example of how an extraordinarily skillful group of outstanding scientists could draft a document bearing within it a blueprint for the development of the forest policy for the next quarter-century. The report examined in detail the forestry experience of the nations of western Europe and applied the lessons to be learned from that experience to the situation in the United States. It stated that in the forest reservations the commission had visited, fire, caused either willfully or carelessly by prospectors, miners, tourists, did far more damage than did trespassers. Next to fire in destroying young trees and undergrowth were the nomadic bands of sheep which did far more damage to the ranges on important watersheds than the sheep were worth. The report emphasized that the forest reserves belonged to, and should be managed for, all the people, not for any particular class. The steep-sloped lands should not be cleared, the grazing of sheep should be regulated, miners should not be allowed to burn land over willfully, lands better suited for agriculture or mining should be eliminated from the reserves, mature timber should be cut and sold, and settlers and miners should be allowed to cut only such timber as they needed.

Members of the commission hit hard at the patronage system, low pay, insecurity of tenure and poor quality of appointees made responsible for enforcing the regulations against trespass on the public lands, and used some of William A. J. Sparks' earlier phraseology in condemning the Timber Cutting Act, calling it the "greatest gift ever made by Congress." Citing the conduct of the Homestake Mining Company which allegedly had violated every regulation concerning the cutting of timber on public mineral lands while cutting timber worth between $2 million and $3 million, the commission urged that the Timber Cutting and the Timber and Stone Acts, both of which encouraged fraud, be repealed and recommended that the administration of the forest reserves should be placed in the hands of nonpolitically oriented men trained in the best of modern science and engineering and of highest character. To secure such men liberal sal-

[9] *GLO Report, 1893,* pp.78–79; 1894, p 94.

aries and permanent tenure should be given them at the outset. A director, assistant director, four inspectors of forests, 26 head foresters and 26 assistant foresters assigned to the 26 districts, and 200 rangers should be provided. An initial appropriation of $250,000 was recommended to get the new agency under way.[10] Cleveland was deeply impressed with the oral recommendations of the commission, delivered to him before the full report could be made public—over the objections of Pinchot, who rightly feared that any action taken before the report was released would produce great opposition. Cleveland promptly issued 13 proclamations establishing reserves in seven states as recommended.[11]

A storm of protest arose in the West, expressed in memorials from legislatures and public meetings, by letters from western public officials, angry editorials and vituperative denunciation of the President in both Houses of Congress that has rarely been equalled.[12] Senators Wilson and Turner of Washington, Shoup of Idaho, White of California, Clark of Wyoming, Rawlins of Utah, and particularly R. F. Pettigrew of South Dakota outdid themselves in condemning the President's arbitrary action, based on the recommendations of "theorists" (Pinchot, Sargent, *et al.*) who knew nothing of the West. Mining and lumbering, the two major industries, would be completely halted by the proclamations, they said.[13] So bitter was the feeling that for a time it appeared that both the reserves and the forest reserve section of the Revision Act of 1891 might be endangered. The later publication of the report of the Commission, and smart footwork by some of the act's supporters toned down the bitterness in Congress to some extent and led to a compromise between the point of view of the scientists and of the western representatives.

Forest Management and Forest Lieu Act

The compromise took the form of an amendment proposed by Senator Pettigrew to a civil appropriation bill that involved new and unbudgeted funds. The amendment was not germane to the bill and should have been ruled out on the point of order that was raised. The amended bill, in the form finally enacted on June 4, 1897, came to be called the Forest Management Act. It suspended the proclamations of February 22, 1897, until March 1, 1898, and restored the withdrawn lands to the public domain where they were subject to entry. This was a blow to the conservationists but seemed necessary to allay western feeling. Senator William B. Allison declared that the amendment was not necessary as the President was prepared to order the return of the lands to the public domain when authority was given him. Pettigrew's reply was that it was more than a question of returning the lands to the public domain; what was most important was to provide in the amendment that "prospecting, locating, developing" the mineral resources were to be permitted in all the forest reserves, and were to be subject to the control of the Department of the Interior. The Secretary was authorized to make rules and regulations for "the occupancy and use" of the forests, a provision which was to be the legal basis for the Department's control and leasing of grazing and waterpower sites at a later time. He was also authorized to provide for the protection of the reserves

[10] *S. Doc.*, 55th Cong., 1st sess., Vol. 5, No. 105 (Serial No. 3562), 37 pp. The Commission also recommended the establishment of the Mount Rainier and Grand Canyon areas as national parks.

[11] 29 Stat., Proclamations 19–31. Gifford Pinchot's account in his *Breaking New Ground* (New York, 1947), pp. 86 ff., is useful.

[12] Robbins, *Our Landed Heritage*, pp. 315–21.

[13] *Cong. Record*, 55th Cong., 1st sess., pp. 899–900, 908–25; *S. Doc.*, 55th Cong., 1st sess., Vol. 5, No. 68 (Serial No. 3562); Robbins, *Our Landed Heritage*, pp. 315 ff.; Richardson, *The Politics of Conservation*, pp. 1 ff.

against fire and depredation and to sell "dead, matured, or large growth of trees" at their appraised value but not for export from the state or territory in which they were cut. Bona fide settlers, miners, residents, prospectors were permitted free use of timber for firewood, fencing, building, mining, and other domestic purposes.[14] This last provision retained the possibility of the same confusion and uncertainty of the past concerning the right of miners, for example, to take timber. Did it allow the Anaconda to continue to take the millions of feet it needed for its continued operations or was it intended to apply only to individual miners who needed just a small amount of timber? Other provisions allowed the President to reduce the area of reserves, change their boundaries or vacate them entirely, and permitted land primarily of use for agriculture or for mining, and not for forestry, to be eliminated from the forests.

Most unfortunate was the inclusion in this act of the famous Forest Lieu Section allowing settlers or owners of unperfected or patented lands within the reserves to relinquish their tracts and to select in lieu, vacant land open to settlement in amount equal to that relinquished. In view of the scandals that emerged from the use of this Forest Lieu Section it is interesting to find that Senator Pettigrew of South Dakota, a member of the Senate Committee on Public Lands, claimed that he had inserted the original provision allowing actual settlers the right of exchange but that when the bill was reported back from conference, it had been changed from "the settler" to "the settler or owner" which made it applicable to the land grant railroads.

Pettigrew noted that the chairman of the Senate members of the conference was William B. Allison, long known for his close relations with the Union Pacific Railroad, and the chairman of the House members was Joe Cannon, one of the most conservative and pro-railroad members of the Lower House. Pettigrew says the conference report came to the Senate on the day before the session was to end, was not printed, and was rushed through after a hurried reading, and he did not notice the change. His account, written in 1922, is in error in that the conference report was read and acted upon in the Senate on May 27, or 8 weeks before the end of the session, and Pettigrew did find time to accuse those who had drawn up plans for the forest reserve proclamations of 1897 of extravagantly devoting their time to a pullman tour of the West, and not to any careful examination of the forests.[15] Pettigrew's recollection that it was the railroad-oriented Senator William B. Allison and Representative Joseph G. Cannon who were responsible for making the Forest Lieu Section applicable to them on its face is not improbable but his memory played him false on some details.[16] He greatly exaggerated, in 1922 when he said this

[14] 30 Stat. 34–36. Western opponents of the Proclamations of 1897 tried to include in the Pettigrew amendment a section narrowly defining the purposes for which reserves might be created but it was too general to have any important limiting effect.

[15] *Cong. Record*, 55th Cong., 1st sess., May 27, 1897, p. 1284.

[16] An able graduate student tried to determine whether the Santa Fe or the Northern Pacific, two of the major beneficiaries of the forest lieu provision, could have had any part in influencing the Congress in its behalf. After a careful reading of the debates and other documents and a consideration of the position of the two railroads as of 1897 he concluded the Santa Fe officials were not aware of the possibilities of the bill for some months after its enactment and that the Northern Pacific officials were well supplied with timber, a good part of their alternate sections being within the forest reserves (exclusive to the Mount Rainier National Park) had sufficient timber on them not to justify relinquishing them for land elsewhere. Gary D. Fenstermacher, "More Incongruity. The Forest Lieu Land Act of 1897," (1963).

privilege of exchanging lands was worth $50 million to the railroads.[17]

Under the Forest Management Act the Geological Survey was assigned responsibility for the surveying of the forest reserves.[18] Henry Gannett, geographer in charge of the surveys, the preparation of the land classification and topographical maps and the delineations of the reserves, rendered a service that Gifford Pinchot approved of and made use of later. The intensiveness of the investigations and the detail of the studies with their numerous illustrations and maps reveal the remarkable thoroughness, the scientific precision, and the imagination of the skilled participants. Here in two quarto volumes is contained a tremendous amount of detail concerning the status of the forest reserves as of 1897-1902, such as the varieties of timber trees and estimates of the number of board feet of the more important species, the condition of the forest till, the damages done by fires, disease and insects, the extent of cutting of dead wood which may have been legal and of green wood which ordinarily was not, the location and capacity of sawmills, the attitude of the local people toward the reserves and the larger timber cutting operations on them, the amount and location of homesteading, the number of livestock and the degree of damage, if any, they had done to the grasses and the young trees in burned over areas. Gannett had a considerable part in suggesting areas to be withdrawn for reserves, in which he seemed to have worked closely with Pinchot.[19]

Gifford Pinchot, like Fernow, thought of the forest reserves as a resource not to be locked up for the future but to be used subject to regulation that would require the cutting of mature trees, would provide for reforestation where natural regeneration would not take place speedily, and would give protection against fire, diseases, and depredations by unlicensed lumbermen. He was an extraordinarily able publicist who through his associations with influential Congressmen, and cultivation of the press quickly won support for the Division of Forestry in the Department of Agriculture, a division which had not attracted much attention or financial support under Fernow. One gambit that won the solid support of influential lumbermen to the agency was the offer in 1898 to provide them with technical advice concerning the

[17] R. F. Pettigrew, *Imperial Washington. The Story of American Public Life from 1870 to 1920* (Chicago, 1922), pp. 16–17.

[18] 33 Stat. 34.

[19] U.S. Geological Survey, *Nineteenth Annual Report, 1897–1898*, Vol. 5; *Twentieth Annual Report, 1898–1899*, Vol. 5; and *Twenty-First Annual Report, 1899–1900*, Vol. 5; and *Twenty-Fifth Annual Report, 1903–1904*, Vol. 1, p. 287; Gifford Pinchot, *Breaking New Ground*, pp. 92, 123. The observations of Gannett and his staff concerning the amount of timber cut on the reserves are particularly useful to the historian. For example on the Plum Creek Reserve in Colorado it is said that lumbermen had worked over the entire reserve cutting out the best of the timber. In some places a second and even third culling had been made. When the reserve was established there were six portable sawmills together turning out between 60,000 and 70,000 feet of lumber daily. Most of the lumber was shipped to markets far outside the reservation, being hauled to distant railroad stations and there transshipped. At South Platte from 25,000 to 50,000 feet were loaded for Denver and other commercial centers. Sawmill operators generally were said to leave the logging to others. They located their mills on patented, homestead, or state lands, hauled their lumber away as soon as cut to prevent its discovery and attachment by timber agents. It was a common practice to stake out a mining claim on a heavily timbered tract, cut and sell the timber without getting title, and then move to another choice spot. Over and over again the men preparing the reports said that the lumbering was extraordinarily wasteful for only the best part of the logs were taken and large amounts of good lumber was left to rot, leaving in the wake of the cutting operations an immense waste, a "tangled mass of unused and half used" timber. Local residents maintained they saw nothing wrong in the commercial cutting of timber though they might deplore the wasteful practices and the fires that sometimes followed. For protection, sawmill operators were charged with setting fires to deaden trees which they could then cut legally.

management of their forests. Numerous owners of large forests in the East and South called for this service, giving Pinchot and his staff a wide variety of practical experience in applying some of the theoretical learning they had acquired and at the same time showing the lumbermen that scientific forest management did not mean locking up the forest reserves. In 1901, for example, Pinchot made a personal examination of 14 timber tracts and three woodlots in 11 states covering 788,000 acres, including a 100,000-acre tract of the Sawyer and Austin Co. in Arkansas, a 52,000-acre tract of the Deering Harvester Company in Missouri, a 60,000-acre spruce and hardwood tract of William Rockefeller in the Adirondacks in New York and 350,000 acres of the Great Northern Paper Company in Maine. Also, at least three states—Maine, New Hampshire, and California—voted funds to the Division of Forestry for studies of their forest conditions.[20] Pinchot and his staff prepared working plans for the forest tracts they studied that called for the harvesting of mature trees, the elimination of dead and dying trees and of those species for which there was little demand. The reports of the office from 1898 to 1905, when it assumed charge of the forest reserves, provide information concerning the astonishing number of tasks in which Pinchot was involving his staff for private, state, and Federal forest lands.

Congress obviously liked the type of leadership Pinchot gave with its noise, turmoil, excitement, and propaganda, though there was also some grumbling; it responded by increasing the appropriations for salaries and research from the $28,520 voted in 1897 to $425,140 in 1904. All of this was for research, investigation, and publication but not for practical forestry experiments, for the Bureau, as the old Division became in 1901, still had no responsibility for the administration of the national forests, though it was acquiring responsibility for administering the forests on certain Chippewa lands in Minnesota, as will be seen below. Meantime, in the Interior Department steps were being taken under the Forest Management Act of 1897 to provide management and protection for the forest reserves that had been set aside and to continue the earlier efforts to prevent timber depredations on the public lands. The appropriations for these activities show that Congress was receptive to the appeals from the Interior Department also.

Until it began, in a rather sporadic way, to prevent depredations upon public forested lands in the 1850's, the General Land Office had been very largely absorbed with the work of preparing the public lands for sale or donation to the states, railroads, or actual settlers and to give them a secure and exact title. Withholding land for public purposes was not a part of its obligations and its officials, with some exceptions, had favored transferring the public domain to private ownership.

By the seventies the General Land Office was making serious efforts to prevent trespass on the public lands but chiefly to make sure that the government secured the stumpage value of timber. Except for Burdett, Williamson, and Sparks, the Commissioners did not share the growing public concern for the preservation of areas of rare natural beauty and spectacular grandeur. Their attitude was in harmony with that prevailing on the cutting edge of the frontier in the Far West. Thus administration of the areas set aside for national parks showed no imaginative leadership, no effort to preserve and make available to the public the enjoyment of these areas. When,

[20] In 1902, 37 applications were made by large owners of timberlands for the professional assistance Pinchot offered to give. In his report for 1902 he listed seven such applicants to whom the assistance was given for a total of 535,000 acres in Tennessee, South Carolina, Michigan, New York, and Maine. Department of Agriculture, *Yearbook*, 1901, pp. 327–28; *ibid*, 1902, pp. 113–16; *ibid*, 1903, pp. 508–509.

Appropriations for Forest Protection and Forestry

	For Preventing Depredations on Timber, Protecting Public Lands		Care and Administration of the Forest Reserves		Division, Bureau of Forestry, Forest Service		
1898	$110,000	----------	$75,000	100,000	1896	$28,520	
1899	110,000	----------	75,000	----------	1897	28,520	
1900	125,000	$40,000	--------	39,000	1900	48,520	
1901	125,000	60,000	300,000	----------	1901	88,520	
1902	----------	----------	300,000	----------	1902	185,440	
1903	375,000	----------	375,000	----------	1903	350,000	
1904	260,000	15,000	375,000	3,860	1904	425,140	
----------	----------	----------	----------	----------	1905	885,000	50,000

Compiled from annual reports of the GLO and the Bureau of Forestry and the Statutes at Large.

therefore, the Land Office was given responsibility for the administration of the forest reserves under the Act of 1897, it was ill prepared to carry out its new task. It had no foresters—there were very few in the country—it was staffed with politically oriented people; as in most government agencies of the time, nepotism was common; "rings" of lumbermen, timber speculators, and stockmen, it was commonly charged, had so dominated local land offices as to assure to them the choicest lands; and railroad interests were said to be unduly influential in the head offices. Some of these charges were doubtless exaggerated but settlers were ready to believe them when they saw preference given to influential applicants for land. What then, might be expected of management by the General Land Office of reserves against which there was a good deal of antagonism in the West?

Binger Hermann, Commissioner of the General Land Office, was responsible for initiating a new program of management when he assumed office in 1897. Division "P" was set up in the Land Office to administer the reserves, as provided in the act of that year. A corps of investigating agents was created to prevent fire and depredations, to control grazing and limit the number of stock permitted in the forests and to exact a charge for the privilege, to control, lease and charge for the use of power sites, to sell stumpage and regulate the cutting of trees, and provide free timber, fuel wood, and fence posts to settlers. In 1901 when additional forests had been created and the staff of Division "P" had grown to more than 400 and civil service examinations had been initiated, responsibility for administration was given to a "special technical division designed 'Division R.' " [21]

From the outset Hermann was troubled about the forest lieu provision of the Act of 1897 which allowed any owner or bona fide claimant to land within the reserves to relinquish the tract "and select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent." [22] Hermann maintained that it was intended to apply "to settlers or owners of agricultural lands" who feared that when their land was enclosed within forest reservations, access roads, schools and churches would be kept out and their lands would become

[21] Henry Clepper and Arthur B. Meyer, *American Forestry. Six Decades of Growth* (Washington, 1960), pp. 178–79.

[22] 30 Stat. 36.

diminishingly valuable. In the first full year of operation it became apparent that the provision was being taken advantage of "in a speculative way" by buyers of land from states and railroads whose lands had little or no value for timber or grazing, or from which the timber had been cut off. They were relinquishing these lands in exchange for valuable lands outside the forests which could not be bought or otherwise acquired, except fraudulently through the use of dummy entrymen. Hermann recommended the adoption of a measure that would allow the relinquishment of agricultural land only, but he did not define this term.[23]

In his 1899 report Hermann commented again on the abuses occurring under the lieu provision. Railroads, lumber companies, and persons who had acquired a Timber and Stone Act entry later included within national forests, after stripping everything of value from their sections, were demanding the right to exchange their now worthless land for valuable land outside the forests. At the same time he conceded that departmental rulings had greatly enhanced the value of the lieu privilege by holding that unsurveyed lands, contiguous or noncontiguous, could be acquired with the lieu scrip.[24]

By 1900 the Land Office was under attack for drawing plans for the creation of forest reservations in which railroad holdings were large. Under the lieu provision the railroads would be entitled to exchange holdings not worth 50 cents an acre for land outside the new reserves that would be worth $5 an acre. It was charged that the Northern Pacific Railroad would profit from such an arrangement in Idaho alone to the amount of $3 million. Congressman Edgar Wilson declared that the reservation the Department was readying for proclamation had within its limits 100 schoolhouses, three towns, $4 million worth of assessable property and many thousands of people. He declared that four-fifths of the land intended to be included was devoid of timber.[25] Whether the Northern Pacific was to profit may be questioned but other powerful interests were certainly using the lieu land provision. No action was taken to curb them except that an amendment to an appropriation measure reversed the decision of the Land Office allowing persons to locate unsurveyed land with their lieu scrip but continued the privilege to those who had delivered deeds for land within the reserves and made applications for specific tracts outside by October 1, 1900.[26] In the reserves of 1900 the railroads held 2,394,160 acres as follows:

Northern Pacific	1,305,600
Oregon & California	40,020
Southern Pacific	503,680
Union Pacific	800
Atlantic & Pacific	391,360
Wagon Roads, Oregon	152,400
Total	2,394,160

In addition 238,279 acres of state selections when bought by individuals were susceptible of exchange for the scrip and 1,245,951 acres of privately owned land, making a total of 3,878,391 acres that were eligible for exchange.[27] By narrowing the base for selection, the lieu scrip became somewhat less valuable.[28]

Hermann charged that pressure was being exerted on the General Land Office to

[23] *H. Doc.*, 55th Cong., 3d sess., Vol. 14, No. 5 (Serial No. 3756), pp. 89–90.

[24] *H. Doc.*, 56th Cong., 1st sess., Vol. 17, No. 5 (Serial No. 3914), pp. 113–15.

[25] *Cong. Record*, 56th Cong., 1st sess., April 9, 1900, pp. 3934–35.

[26] Act of June 6, 1900, 38 Stat. 614.

[27] *H. Doc.*, 56th Cong., 1st sess., Vol. 100, No. 643 (Serial No. 3997), pp. 2 ff.

[28] Hermann reported that oil land having values from $150 to $2,500 an acre had been "appropriated by forest-reserve lieu selections. . . ." *Ibid.*, p. 100. In 1901 he spoke of the lieu scrip as bringing from $3 to $5 an acre. *H. Doc.*, 57th Cong., 1st sess., Vol. 22, No. 5 (Serial No. 4289), pp. 110–11.

have certain reserves created in which interested parties had large amounts of land of little value so that they could exchange it through lieu scrip, for choice timberland. State school lands were also being bought within the reserves or in areas where it was hoped reserves would be created, for the same purpose. Hermann seemed to minimize the fact that railroads were utilizing the privilege of exchange and emphasized more in his report for 1901 that holders of inferior agricultural land, presumably settlers, were doing so.[29] He suggested the desirability of Congress providing that only lands of equal value should be exchanged for lands within the reserves. Until further restrictions were placed on the use of the lieu scrip he recommended that no additional reserves be created.

In the light of later attacks upon Theodore Roosevelt and Gifford Pinchot for the Executive orders creating 21 new forests in 1907, it is interesting to recall that much of the pressure for these and other forest reserves started with local people concerned about watershed controls, fearing floods resulting from overgrazing and from denuding the land of timber. Among the numerous petitions asking for the establishment of reserves may be seen the signatures of the mayor and comptroller of Seattle, Governor Miguel A. Otero of New Mexico, the chairman of a Republican County Committee, the San Diego Chamber of Commerce, a county judge, two Congressmen, and the Governor of Colorado.[30]

In 1889 Congress adopted the Nelson bill, fostered by Knute Nelson, Minnesota Representative, that provided for a survey and appraisal of the Chippewa Reserves of Minnesota. The land suitable for agriculture was to be open to homestead but at $1.25 an acre, and the timber was to be sold at its appraised value but not for less than $3 per thousand board feet.[31] The statute required a "careful, complete and thorough examination" of the land by 40-acre tracts to be made by "competent and experienced examiners" to distinguish between those tracts primarily timbered and those having little or no timber and suitable for farming. Unfortunately, the examination and appraisal was made by persons appointed for political reasons who grossly neglected their task, and made sheer guesses that greatly underestimated the amount of timber. Widespread fraud in the sale of the Chippewa lands was later reported in Congress. One large contract for the sale of 70 million board feet of pine when scaled out came to 300 million feet and other sales showed that between three and four times as much timber was acquired as was paid for. Heavily timbered tracts were classified as agricultural; on one 80-acre homestead 800,000 feet of pine was cut. When the facts came out they brought little credit to the Office of Indian Affairs or to the Department of the Interior.[32]

Secretary Ethan Hitchcock suspended the sales, when these matters were brought to his attention in 1899 and 1901, until some other procedure could be worked out to prevent further robbery of the Indians.

Though Congress was wholly unwilling to apply any effective classification system to the public lands or to apply to timbered land a pricing policy based on the current appraised value of the stumpage, it was experimenting—not very successfully it is true—with such a policy on Indian lands. In the 1850's it tolerated a system whereby the Indian Office arranged treaties with a

[29] *Ibid.*, p. 119.

[30] *H. Doc.*, 56th Cong., 1st sess., Vol. 100, No. 643, Part 2 (Serial No. 3997), pp. 2 ff.

[31] Act of Jan. 14, 1889, 25 Stat. 642.

[32] *Cong. Record*, 57th Cong., 1st sess., June 19, 1902, pp. 7048, 7088; *House Reports*, 57th Cong., 1st sess., Vol. 7, No. 1936 (Serial No. 4405), p. 16; J. P. Kinney, *A Continent Lost—A Civilization Won; Indian Land Tenure in America* (Baltimore, 1937), p. 229.

number of Indian tribes in Kansas by which they surrendered portions of their reserves in trust to be sold by the Indian Office. The lands were appraised and were not to be sold for less than their appraised value.[33] Thereafter when Indian surplus or trust lands were to be sold the land was first to be appraised and the appraised value was to be the minimum price.[34] A rough geographical classification was even established for Cherokee lands in Kansas in an Act of 1872 declaring that tracts east of the Arkansas River were to be sold for $2 an acre and those west of the river were to sell for $1.25 an acre.[35]

More notable instances of congressional concern for the management of Indian lands—a concern not shown toward the public lands—appeared in the relations with the Menominee and Chippewa Indians of Wisconsin and Minnesota. Heavy stands of white and Norway pine covered much of their reserves and drew the attention of lumbermen in the eighties and nineties when the government timber in these states was practically gone and that on private lands was being rapidly depleted. Since 1882 Congress had allowed the Menominee Indians to cut and sell the dead and down timber on their reserve and in 1890 authorized them to cut 20 million feet of green timber annually and if they had difficulty in marketing it at a reasonable price government agents were to superintend the driving of the logs down river.[36] Gifford Pinchot gives credit to the Minnesota Federation of Women's Clubs for bringing the scandal concerning the sale of timber on Indian lands to public attention and for the plan for the creation of a national forest from a part of the surrendered Chippewa land. Equally important, it was Pinchot who was brought into a meeting of the Minnesota delegation to Congress to draft a bill providing for management of the lands. The bill was adopted on June 27, 1902.

Pinchot's prestige was high and the resulting measure was largely his. It stated that the timber on a portion of the tracts was to be cut, banked and scaled, and sold on sealed bids—not at public auction where collusion almost invariably prevented competition—after extensive advertising throughout the country. A minimum price of $4 per thousand was set for Norway pine and $5 for white pine. On 200,000 acres of the lands to be selected by the Forester, i.e., Pinchot, the purchaser of the timber was to leave 5 percent of the pine for reforestation; after the cutting the land was to be reserved as a national forest along with numerous other choice spots to be selected by the Forester. Logging on the 200,000 acres was to be subject to regulations established by the Forester who was to have under his jurisdiction the patrolling and protection of the tract under such rules and regulations as he cared to establish. Although the General Land Office and the Department of the Interior had been "managing" the forest reserves under the Management Act of 1897, it had gained no prestige in forestry circles or seemingly in Congress which, when it wanted professional advice, turned to Pinchot and the Bureau of Forestry in Agriculture.[37]

[33] I have discussed the sale of the trust lands in Kansas in *Fifty Million Acres*, pp. 48 ff.

[34] For stipulation for appraisal of Indian lands see Charles J. Kappler, *Indian Laws and Treaties* (3 vols., Washington, 1904), Vol. 2, relating to Kansas, Sac and Fox, Pawnee, Miami, New York, Omaha, and others.

[35] Kappler, *Indian Laws and Treaties*, 1:132.

[36] 26 Stat. 146.

[37] *Cong. Record*, 57th Cong., 1st sess., June 19, 1902, pp. 7048, 7088; 32 Stat., Part 1, p. 406; Pinchot, *Breaking New Ground*, pp. 203–212. William Watts Folwell, *History of Minnesota* (4 vols., St. Paul, 1930), 4:258 ff., emphasizes the role of H. H. Chapman as well as that of Pinchot in the planning for the national forest on the Chippewa lands. Folwell, 4:190 ff., works through a huge amount of documentary material on the management and sale of the Chippewa lands in Minnesota, which did not work out as Pinchot had planned but rather in a large degree

Administration of the forest reserves by the General Land Office under Commissioner Binger Hermann, with his sensitivity toward the views of western economic groups and disinclination to push forward along conservation lines, was making little progress. In contrast, Gifford Pinchot was conducting a "vigorous campaign to transfer the Forest Reserves to the Department of Agriculture" where they would come under his direction. True, at the request of Secretary Hitchcock, Pinchot was asked to provide technical advice for the management of the reserves but there is little or no evidence that Hermann was prepared to act upon it. In fact, almost from the hour of his appointment as head of the Division of Forestry, Pinchot had as his goal the transfer of the forest reserves to Agriculture. To that end he lobbied tirelessly night and day with Representatives, Senators, lumber companies, and publicists, won the support of the National Board of Trade, of the American Forestry Association, and of Secretary Hitchcock, as well as that of President Roosevelt. By November 1901, Hitchcock was so convinced that he did an unheard of thing for a bureaucrat: he suggested the desirability of having the forest reserves transferred to the Department of Agriculture upon whose trained foresters he had already leaned for a report on management of the reserves.

Hitchcock was ready, but Binger Hermann of the General Land Office was not. In his report of 1901 Hermann devoted considerable space to information about the reforestation work he was doing in the mountains of Southern California. The work of the office was systematized, men were being trained in the handling of the many problems coming before them, intrusions were being limited, protection from fire was well established. There is no hint in Hermann's report of any need for reliance upon the professional foresters in the Bureau of Forestry. Although professional forestry skill and training were still concentrated in the Department of Agriculture, that Department had no responsibility for forest management of public lands except in Minnesota. It was giving the best of its advice and experience to private and state owners of timberlands while Interior was giving little more than some protection from fire to the 53 forest reserves under its control.[38]

In maneuvering to bring government administration and research in forestry together Pinchot tried a number of plans before he was finally successful in 1905. One such plan was to have Pinchot appointed as head of Division "R" in Interior where he would have responsibility for the administration of the reserves, under Binger Hermann, while carrying on his work as head of the Division of Forestry in Agriculture. Actually he had provided Hitchcock with aid, personnel, and ideas for management of the reserves and there seemed good reason to make the appointment. But to be chief of two divisions in separate departments seemed impossible to carry out because of bureaucratic red tape. The plan was abandoned. In lieu of this Hitchcock was persuaded to bring Roth back from Cornell and to place him in charge of Division "R." This was done and with other men drawn from Pinchot's Division steps were taken to introduce into the

went into private ownership through allotments to the Indians and then was sold to whites under conditions that again brought dishonor to the Indian Office. Folwell traces the sad story of the loss of the White Earth Reservation with its valuable timber to unscrupulous whites and adds, "It is painful to add that no member of the Minnesota delegation in Congress in all these years entered protest or recorded a vote against the vicious legislation and . . . no Minnesota public man raised his voice in behalf of the plundered Indian." Pp. 295–96.

[38] *H. Doc.*, 58th Cong., 2d sess., Vol. 18, No. 5 (Serial No. 4644), p. 567.

new division orderly management of the reserves. It proved impossible, however, for Roth to work with Hermann and he left to head the new School of Forestry at Michigan. Politics won out over professional forestry. Pinchot meantime had been pressing for the transfer of the reserves from Interior to Agriculture; a bill for that purpose was given serious consideration in Congress in 1902. Though it was strongly endorsed by President Roosevelt and Secretary Hitchcock and its friends counted on its enactment, the measure was defeated by Joe Cannon's action in holding that it would increase the cost of administering the reserves.[39]

Having failed in his frontal attack upon the absurdity of keeping the theoretical and practical responsibility in forest management separated, Pinchot came up with a new plan to draw attention to the need for scientific management of the reserves and the desirability of having them placed in Agriculture. He persuaded President Roosevelt in 1903 to appoint a Committee on the Organization of Government Scientific Work and a Public Lands Commission, on both of which he became a prominent member. The former committee, among other recommendations, urged the concentration of all responsibility for the forest reserves and the national parks in Agriculture. It might not have been wise for two groups to make the same report on the reserves, so the Public Lands Commission was more guarded. It recommended: (1) repealing the Timber and Stone Act, (2) authorizing the Secretary of the Interior to sell timber on the public lands at carefully appraised values, (3) allowing free use of timber in limited amounts by settlers and miners, (4) excluding lands suitable for agriculture from the forest reserves or making them available for forest homesteads of up to 160 acres, (5) giving the President authority to set aside as grazing districts land suitable for pasturage by livestock and to impose fees for the privilege of grazing on lands and to regulate the use of the lands, and (6) repealing the forest lieu provision of the Act of 1897. The commission recommended that where the Secretary of Agriculture and the Secretary of the Interior so recommended, the latter should be authorized to accept private lands within existing forest reserves in exchange for which it could convey nonmineral land of equal value and acreage outside the reserves, but within the same state. If it was impossible to arrange for such an exchange officials should be permitted to buy the desired lands within the forests.[40] Opponents of Pinchot, and they were rapidly coalescing, could well have maintained that the Public Lands Commission of 1903-1904 was a hand-picked trio consisting of W. A. Richards, former Governor of Wyoming who had replaced Binger Hermann as Commissioner of the General Land Office and unlike the latter was quite susceptible to Pinchot's dynamic personality; Frederick H. Newell, in charge of the reclamation work and an ardent conservationist; and Pinchot. What better device was there to bring forth the views of Pinchot?

It has been shown that several of the early forest reserves were created as a result, at least in part, of local pressures in the West for protection of the watersheds of streams and for protection from fire, but hostility to the rapid expansion of reserves was strong, both in 1897 when Cleveland's proclamations were issued, and again dur-

[39] Filibert Roth described some of the innovations he introduced into the Division of Forestry in three articles in *Forestry and Irrigation*, VIII (May, June, and July, 1902), 191–93, 241–44, and 279–82. For comment on the defeat of the move to transfer the reserves see *ibid.*, pp. 226, 270. The *American Lumberman* of Chicago is quoted as strongly criticizing Cannon for his opposition. Pinchot, *Breaking New Ground*, pp. 138, 196–97.

[40] Pinchot, *Breaking New Ground*, pp. 240–50; *S. Doc.*, 58th Cong., 3d sess., Vol. 4, No. 189 (Serial No. 4766), pp. iii–xxiv.

ing Roosevelt's administration, when Pinchot was pressing forward the selection of western timberlands for creation into reserves. On June 10, 1902, the House voted 100-73 against a measure to transfer the forest reserves from Interior to Agriculture after Joe Cannon of Illinois and John F. Shafroth and John C. Bell of Colorado had condemned it and excoriated Pinchot for his "so-called scientific forestry." However, Binger Hermann had fallen into trouble with corrupt elements in Oregon who had been taking advantage of the loopholes in legislation to gain ownership of timberland. Before his dismissal he had managed to destroy incriminating evidence, for which he was later indicted. Officials in Oregon as well as Washington were involved, including a Congressman and a Senator. The affair did no good to the General Land Office and its administration of the forest reserves.[41] In 1904 and 1905 a measure to transfer administration of the reserves that was shorn of a provision for game preserves passed both Houses without a division.[42]

Reserves Transferred to Agriculture

Nineteen hundred and five marked a high point in the history of the forestry and conservation work of the United States with the transfer of the forest reserves to the Department of Agriculture.[43] By then the total acreage of reserves, including those recently ordered by Roosevelt, came to 85,627,472 acres and constituted the most valuable of the remaining forest lands in public ownership. It was notable, indeed unparalleled, for Secretary Ethan Allen Hitchcock and Land Commissioner W. A. Richards to strongly recommend the transfer of such a potentially large and important responsibility from the General Land Office, whose obligations were bound thereafter to diminish, to Agriculture. By 1921 the Forest Service had 2,572 employees compared to 1,275 in the Land Office, and the disparity increased thereafter. Small wonder that two later Secretaries of the Interior, Albert B. Fall and Harold Ickes, were troubled about the loss of the forest lands from their jurisdiction.[44] Fall's campaign to regain the Forest Service fell apart when the Teapot Dome transfer scandal became known. Ickes carried on his campaign for years and came close to success.[45]

After the transfer, responsibility for surveying and for all mineral entries within the forests remained in the hands of the Land Office. The Transfer Act of February 1, 1905, allowed the Forest Service 5 years during which all moneys received from cutting of timber, grazing fees, and other sources should be conveyed into the Treasury for a special fund on which the Service could draw for the protection, administration, improvement, and extension of the reserves.[46] In addition Congress appropriated a record sum for salaries and other

[41] *Cong. Record*, 57th Cong., 1st sess., p. 6573.

[42] *Ibid.*, 58th Cong., 3d sess., pp. 1370, 1397; John Messing, "Public Lands, Politics and Progressives: The Oregon Land Fraud Trials, 1903–1910, "*Pacific Historical Review* XXXIV (February 1966), 35–66.

[43] 33 Stat., Part 1, p. 628.

[44] For Fall's efforts to bring the forests back to Interior see Greeley, *Forests and Men*, pp. 96–101. Ickes' lobbying for the return of the forests to Interior may be seen in his *Diary*.

[45] When Congress showed no inclination to accept the recommendation of his Public Land Commission, President Hoover presented to Congress in late 1932 a plan for the reorganization and transfer of a number of the major agencies of the government, including the transfer of the General Land Office to a Division of Land Utilization in the Department of Agriculture which was also to have jurisdiction over the Forest Service and the Bureau of Biological Survey. In return public works was to be concentrated in Interior with the nonmilitary functions of the Corps of Army Engineers and the Bureau of Public Roads transferred to it. The order was poorly timed, members of Congress felt, and it was voted down 202–176. *American Forests*, XXXIX (January, February, and March, 1933), 33, 93, 138.

[46] The Act of Transfer had the approval of W. A. Richards who had succeeded Binger Hermann as Commissioner in 1903.

administrative costs of the Forest Service, including that of protecting the reserves against fire and plunder. Other significant provisions allowed Forest Service personnel to make arrests for violation of laws and regulations relating to the reserves and national parks and to ship timber cut on the reserves out of the state or territory in which it was cut.[47]

Meantime, there had begun what Pinchot called "The Race for New Reserves." Reasoning that public ownership and management was superior to private ownership and no management, Pinchot felt that he and his staff were racing against all the elements in the West now exerting themselves either to prevent the Forest Service and the President from adding to the reserves or to get the best of them into private hands before the lands were withdrawn from entry. Timber cruisers scouted the forests on public lands for choice bodies of timber which they hoped to secure under the Timber and Stone Act or with lieu scrip, Soldier's Additional Homestead scrip, or through the use of dummies and homestead entries.[48] The extensive frauds which enabled timberlands to pass to private ownership under the guise of aiding settlers and the failure of Congress to repeal the Timber and Stone Act and to give sufficient aid to the Land Office to prevent abuses doubtless contributed to Pinchot's conviction that public timberlands could only be saved from plunderers, spoilsmen, and speculators by having them withdrawn for national forest status.

At the close of the McKinley administration (1901), there were 41 forests containing 46,410,209 acres. At the close of Roosevelt's administration the total area included within the reserves was 194,505,325 acres of which a considerable part was privately owned. In his 7½ years Roosevelt, spurred by Pinchot, had added 148,095,116 acres to the reserves. Of this large amount 26,261,626 acres were in Alaska.

[47] Acts of Feb. 1 and March 3, 1905, 33 Stat., Part 1, pp. 628, 872; Pinchot, *Breaking New Ground*, p. 257.

[48] Pinchot, *op. cit.*, pp. 250 ff.

FOREST RESERVES[a]

Year	Total Reserves Number	Total Reserves Acreage	New Reserves Number	New Reserves Acreage
1900	38	46,772,129	1	----------
1901	41	46,410,209	3	----------
1902	54	60,175,765	15	9,146,846
1903	53	62,354,965	2	766,720
1904	59	62,763,494	9	408,529
1905	83	85,627,472	26	22,854,478
1906	106	106,999,423	22	21,306,001
1907	159	150,831,665	57	43,832,242
1908	165	167,976,886	9	11,789,847
1909	158	194,505,325	8	23,552,950

[a] Compiled from *GLO Annual Reports*. In 1907 the reserves were renamed "National Forests."

ESTIMATE OF FOREST RESERVES BY STATES AND TERRITORIES[a]

Alaska	26,761,626	Nevada	5,109,415
Arizona	15,258,861	New Mexico	10,971,711
Arkansas	3,189,781	North Dakota	13,940
California	27,968,510	Oklahoma	60,800
Colorado	15,698,439	Oregon	16,221,368
Florida	674,891	Puerto Rico	65,950
Idaho	20,099,029	South Dakota	1,294,440
Kansas	302,387	Utah	7,436,327
Michigan	163,373	Washington	12,065,500
Minnesota	1,204,486	Wyoming	8,998,723
Montana	20,389,696		
Nebraska	556,072		

[a] Department of the Interior, *Annual Report, 1909*, p. 94.

The haste with which the reserves were created and the inclusion within them of many improvements, as well as great areas which seemed to have little relevance to forest management, disturbed many westerners when they realized what a large proportion of the natural resources of their states was now no longer open to homestead, timber and stone entries, or to lumbering or grazing without permission from the rangers of the Forest Service. Idaho had 39 percent of its territory within the forests, California and Washington 28 percent, and Oregon 26 percent. Was there to be no end to the establishment of new forest reserves, and if not, should not Congress call a halt to a policy which some feared would hinder the growth of the western states by locking up their natural resources from development?

A concerted attack upon Pinchot and the Forest Service was begun, led by Senators Henry Moore Teller and Thomas MacDonald Patterson of Colorado, Clarence D. Clark of Wyoming, Thomas H. Carter of Montana, Charles W. Fulton of Oregon and especially Weldon B. Heyburn of Idaho. Some of their complaints were doubtless justified but when they questioned the integrity of the officers, alleged misuse of the government frank, censored travel expenses incurred in attending professional meetings, objected to the dissemination of information concerning professional forestry practices, and tried to emasculate the Service by reducing appropriations for staff, they aroused admirers of the Service who struck back, though on a higher plane.[49] Other westerners like Senators Francis E. Warren of Wyoming, Fred T. Dubois of Idaho, Francis G. Newlands of Nevada, and Reed Smoot of Utah defended Pinchot and the integrity of the Forest Service personnel though they doubtless were troubled at the extent to which the reserves were being created. In the midst of these attacks *The Nation,* which seemed primarily interested in civil service reform, good government, and low tariffs, expressed the thought that Congress had not risen to the support of President Roosevelt's conservation program. It lamented that both Senate and House Committees on Public Lands were so completely dominated by Senators and Representatives from west of the Mississippi, pointing out that only two of the 15 members of the Senate Committee and seven of 20 of the House Committee were from states east of the Mississippi. The public lands were not matters of concern

[49] For the opposition of California to the creation of new forest reserves by Roosevelt see C. Raymond Clar, *California Government and Forestry* (Sacramento, 1959), pp. 189–91.

only to the people of the West, it maintained.[50]

Prior to 1907 efforts to restrict the Presidential authority for creating forest reserves under the Act of 1891 had met with little favor, but in the midst of the attack upon Pinchot, Senator Charles W. Fulton of Oregon introduced an amendment to an appropriation bill for the Forest Service and the Department of Agriculture that would take from the President the power to create new or add to existing forest reserves in Oregon, Washington, Idaho, Montana, Colorado, and Wyoming. Adopted without division or serious discussion, the provision became law on March 4, 1907 with the approval of President Roosevelt.[51]

Pinchot has related dramatically how he and his staff worked night and day between the introduction of the Fulton amendment and the signing of the appropriation act—8 days later—to prepare last minute proclamations for forest reserves in areas the staff had already investigated. On March 1 and 2, 32 proclamations were issued for the creation of new, and extensions of existing, forest reserves in each of the states in which authority was to be denied on March 3.[52] Pinchot describes the angry reaction of Heyburn, Carter, and others with considerable glee but when the appropriation bill for the next year came up for consideration,[53] his Service had a hard time gaining funds it needed. The Appropriations Act of 1907 also ended the special fund into which all receipts from the leasing of grazing privileges and payments for timber had been paid and on which the Forest Service had previously depended.

Two successive steps taken by Congress to permit the states to share in the proceeds from the income from the forests contributed somewhat to smoothing over the antagonism the proclamations had created. In the Appropriation Act for the Department of Agriculture in 1907 it was provided that 10 percent of all money received by the Forest Service from leasing fees and lumbering should be paid to the states or territories in which the reserves were located for public schools and roads. In 1908 the percentage was raised to 25 percent.[54] In this way the sharing by Federal, state, and local governments in the proceeds derived from revenues of Federal land was begun.

Another policy that brought Pinchot and the Forest Service into conflict with important interests in the West was the controls the bureaucrats established in the forests over grazing by requiring leasing fees, limiting the number of cattle, sheep, and horses in the forests, and determining the time and conditions under which grazing should be permitted. When the reserves were still in Interior, Binger Hermann had first questioned the wisdom of allowing sheep to graze in the forest, holding that next to fires sheep were responsible for the greatest damage to young growth. He issued a temporary order prohibiting sheep grazing on all the reserves but those in Oregon and Washington and

[50] *The Nation*, 86 (June 25, 1908), 568. The editor welcomed the conviction of looters of the public lands in Oregon by a jury in a District of Columbia Court, adding that the government could not get justice in land fraud cases at the hands of a western jury.

[51] *Cong. Record*, 59th Cong., 2d sess., Feb. 23, 25, 1907, pp. 3720, 3869; 34 Stat., Part 1, p. 1271.

[52] Senator Patterson on Feb. 25, thought the Fulton amendment was like shutting the barn door after the horse had been stolen and doubted if the Forest Service "would have the audacity to attempt to set apart any more lands" in the states mentioned, but he did not know either Pinchot or Roosevelt. *Cong. Record,* 59th Cong., 2d sess., p. 3869.

[53] Pinchot, *Breaking New Ground,* p. 300; William B. Greeley, *Forests and Men* (Garden City, 1952), p. 65.

[54] Act of March 4, 1807, 34 Stat., Part 1, p. 1270, and Act of May 23, 1808, 35 Stat., Part 1. p. 260.

in 1899 initiated the practice of requiring permits for grazing on the forests, thus enabling the Land Office to control the number of sheep on a range. Most of the forests were later reopened to sheep but in a number of forests where damage was clear, they were banned.[55] Sheep and goats continued to be the culprits during Hermann's administration and in 1900 were again barred from all forests except those where the rainfall was sufficient to assure that the limited pasturing permitted would not damage the grass. A total of 1,400,000 sheep and 434,750 cattle and horses were permitted to graze in the forests in 1901. State and regional wool growers associations were allowed virtually to determine which sheepmen should be given permits and for what number of sheep. This practice of allowing wool growers associations to perform the business of the government was dropped as soon as Hermann left the Department. In 1903, W. A. Richards, Hermann's successor, reported that the number of both cattle and sheep that had previously grazed on lands now included within the reserves was greater than they could properly bear, damage had been done, and the number to be permitted had to be reduced. He stressed that in making reductions the office was trying to create the least possible difficulty for the stockmen.[56]

Until 1906 no charge was levied for grazing in the forest reserves, nor was there any specific authorization for such a charge. Yet to administer the forests, control grazing to prevent destructive use of the range and trespassing, it seemed essential to have a fee. Introduced the first year the reserves were transferred to Agriculture, the fee ranged from 5 to 7 cents per sheep and from 20 to 40 cents per steer or horse. Stockmen, already disturbed by the limitations placed upon their numbers, became thoroughly upset by the introduction of the fee and were to grow angry every time it was raised. In a report of the Forest Service of 1906 it was stated, "Opposition to the fee is disappearing. There is no longer any doubt as to the advantages of preventing conflict and overgrazing on the ranges. Under restricted grazing cattle and sheep keep in better condition and yield a better profit, and the range is not injured. . . . Every effort is being made to give the stockmen the fullest practicable use of the range. Small nearby owners have the preference, larger regular occupants come next, and owners of transient stock come third." The statement is a bit smug, particularly in the light of later protests against the reduction of grazing permits and the imposition of higher fees.[57] One must concede that it took courage on the part of Pinchot to institute fees for grazing when resentment against the enlargement of the area in reserve was reaching a high point.

At the same time that fees were being introduced, the Forest Service was contracting for the sale of timber. Pinchot planned to sell a substantial amount of stumpage to provide a growing fund for improvement and development of the forests and expected that by 1916 income would equal expenditures. Congress early became disillusioned with the broad financial authority granted him in the Transfer Act of 1905. It left Pinchot less dependent upon congressional appropriations than bureaus usually were for he did not have to justify all items of expenditure. In 1906 Congress stipulated that the special fund from receipts of timber and grazing fees was to be expended only in "accordance with specific estimates . . . to be submitted . . . with estimates of appropriations . . ."

[55] Grazing fees were considered, with the price ranging from $5 per 1,000 sheep in the Mount Rainier Reserve to 1 to 2 cents per head of sheep and 8 to 10 cents per head of cattle in the Cascade Range Reserve. Secretary of the Interior, *Report, 1898*, pp. 87–88; and *Report, 1899*, pp. 101–112.

[56] Secretary of the Interior, *Annual Report, 1901*, pp. 127–32; *1902*, pp. 331–38; and *1903*, pp. 323–27.

[57] Secretary of Agriculture, *Yearbook*, 1905, p. 640.

and on March 4, 1907, the fund was abolished, as has been seen.[58]

Henceforth, the Forester had to depend entirely upon his ability to convince Congress of the various needs of his agency. One point he continually emphasized was that it was not the bureau's policy to lock up the reserves but that their timber and forage were to be used as the demand arose under controls that curbed damage to the watersheds and provided for regeneration of cutover areas and restoration of overgrazed areas.

Lumber Industry Migration

As the lumber industry moved into the Far West and the South after 1900, timberlands in Oregon, Washington, and California that had gone begging because of their remote situation, began to attract attention. Landlookers, speculators, and the usual wheeler-dealers were making their last great onslaught on the public timberland outside the reserves, stimulated by the rapid rise in the price of land and stumpage. Because of the 160-acre limitation on sale or entry it was almost impossible to amass any considerable block of timberland from the government without bribing the local land officers or at least including them among the beneficiaries of any fraudulent method of securing titles. "Land rings" had flourished at every pinery land office in the seventies and eighties in the Lake States and now became common in the Far West. Only with Valentine, Sioux Half-breed, Soldier's Additional Homestead, and Forest Lieu Scrip could unsurveyed public timberland be entered and, except for the latter, the amounts in circulation were small. On surveyed lands homesteaders could file for 160 acres and settlers could buy 160 acres under the Timber and Stone Act. Consequently there was strong motivation to have the upper elevations on which heavy stands of timber were located surveyed so that homesteaders, or dummy entrymen, could enter these lands. Political pressure brought about surveys for which there was no justification for settlement.

The land rings flourished most flagrantly at the Roseburg office in Oregon and at the Eureka office in California.[59] Land prices were shooting up rapidly, perhaps most rapidly in these offices where the timber on public lands yielded more than 100,000 board feet to the acre.[60] It is small wonder that the C. A. Smith Lumber Company of Minnesota which had found it profitable to cut white pine of the Lake States, where as little as 4,000 board feet of pine to the acre was considered sufficient to justify operations, was participating in the scramble for redwood, Douglas-fir, and

[58] Acts of June 30, 1906 and March 4, 1907, 34 Stat., Part 1, pp. 684 and 1269.

[59] In explanation of the degree of corruption that immersed the Roseburg office Jerry O'Callaghan has written:

> A free and easy attitude toward the public lands had been fostered on all levels by their very extent; and by the feeling that whatever the land disposition laws may have said in letter, in spirit they intended that all the land should be in private ownership. Therefore a little perjury in acquiring public lands was considered within the true intent of the law.

"Senator Mitchell and the Oregon Land Frauds, 1905," *Pacific Historical Review*, XXI (August 1952), 255.

[60] By the 1860's in most of the pinery land offices a "ring" existed to prevent competitive bidding at public sales, discourage outside speculators from getting the more heavily timbered land, and to reserve land on the entry books until favored individuals had an opportunity to explore them and later make their entries. I have told the story of the land ring at the Eau Claire, Wis., Land Office in my *Wisconsin Pine Lands of Cornell University;* also see Richard N. Current, *Pine Logs and Politics, A Life of Philetus Sawyer, 1816–1900* and Isaac Stephenson, *Recollections of a Long Life.* One does not find anything in Hidy, Hill and Nevins, *Timber and Men. The Weyerhaeuser Story* (New York, 1963), to indicate the existence of rings from which millmen and large dealers in timberlands benefited, but there is some evidence that settlers pilfered from the lands of the big holders of timberlands.

sugar pine land in the Coast States. Most large absentee investors could keep their hands clean by dealing through agents, attorneys, landlookers and cruisers who would assemble tracts of thousands of acres with funds provided them in advance and would then convey to their clients. The local agents took the risk of using dozens, even hundreds, of dummy entrymen to make homestead applications and to file entries under the Timber and Stone Act for worthless land; they later succeeded in having these tracts included in the forest reserves so they could be exchanged for lieu scrip, which was then used to secure heavily timbered land outside the reserves. Every effort to have the Timber and Stone Act repealed had proved abortive and there was not much prospect of preventing dummies from being used to file entries on surveyed land as Congress was unwilling to vote funds to provide sufficient investigating agents to prevent fraud.

Testimony presented in thousands of land cases and the reports of the Land Commissioners show that there were more fraudulent entries under the Timber and Stone Act than under any other law from 1891 onward except for the homestead law. Some entries, sufficiently investigated to confirm the use of fraud, were rejected, but many others went to patent. H. H. Schwartz, chief of the investigating agents of the General Land Office, estimated, probably too conservatively, that five-sixths of the 12 million acres of public lands that had gone to patent under this law by 1909 had been speedily transferred to corporations or individual investors in timberland. He estimated at $240 million the value of the land for which the government had received only $30 million. One single investor, Thomas B. Walker, acquired 700,000 acres of heavily timbered land in northern California, a large part of which, Schwartz estimated, had been secured under the Timber and Stone Act. He cited another instance, relating to the C. A. Smith Lumber Company, which was charged with shipping out "trainloads of women schoolteachers . . . from Minnesota" to file timber and stone entries in Oregon. All such entries were fraudulent, for the persons filing were required to swear that they were not making the entries for others.[61] Despite continued evidence that the Timber and Stone Act had long since outlived its usefulness, Congress took no action to repeal it. The law required that the lands "may be sold . . . at the minimum price of $2.50 an acre" but in fact they sold for only $2.50. After November 30, 1908, by order of Commissioner Fred Dennett, lands and the timber on them were to be appraised and sold at their actual value.[62] By this time, however, there were "very few timber lands of any value left" outside the forest reserves and such scattered unsold tracts as remained were unsurveyed and not open to timber and stone entries.[63]

Abuses of Forest Lieu Act

Congress, the Land Office, the Forest Service, and the western states all had

[61] Persons associated with the C. A. Smith Lumber Companies were indicted for flagrant abuse of the Timber and Stone Act, among the charges being that they had brought trainloads of women school teachers to Oregon to make entries for them. The case was carried successively through the Federal Circuit Court of Appeals which cancelled 38 patents to 6,000 acres. There is much on the illegal activities of the Smith Companies in Oregon and the Hyde and Benson group in the redwood lands of California in H. H. Schwartz, "The Timber and Stone Act, and the Commutation Clause of the Homestead Act," in "Report of the National Conservation Commission," 1909, *S. Doc.*, 60th Cong., 2d sess., Vol. 12, No. 676 (Serial No. 5399), Vol. 3, pp. 387–402, esp. 392, 396, 398–99; Bureau of Corporations, *The Lumber Industry* (Washington, 1913), Part 2, pp. 55, 57 ff.

[62] Bureau of Corporations, *The Lumber Industry*, Part 1, p. 263.

[63] Secretary of the Interior, *Annual Report, 1909*, Vol. 1, p. 69. How frequently it happened that action to stop abuse was not taken until the bulk of the best lands had gone to private ownership!

occasion to regret the inclusion of the lieu land provision in the Management Act of 1897, and yet it was included for legitimate and doubtless proper reasons. The misfortune was that in drawing this act, like the Timber and Stone, Timber Culture, and Preemption and Homestead Acts, inadequate care was taken to make sure that abuses would not follow. By permitting owners of near worthless land within the forest reserves to exchange them for equal acreages of the very choicest timberlands outside, Congress was setting up a system that invited wholesale abuse and deprived the government of valuable resources. Dealers searched out school sections 16 and 36 within the reserves, bought them from the state, and then relinquished the land for the lieu scrip. Scandal after scandal broke in Oregon and California involving the use of lieu scrip and dummy entrymen. The Oregon frauds—which involved a Senator and a Congressman, registers and receivers, and led to the indictment of 70 people for fraud, false swearing and bribery—were bad enough, but in California the frauds were even more startling.[64] Suspected irregularities first came to light in 1902 in the Hyde and Benson case involving some 1,200 selections embracing 250,000 acres. The fraud, when finally detected after 200 selections had gone to patent, involved "the employment of fictitious names forged to state applications" for worthless land high in the mountains, inducing people to apply for state lands on which they had no intention of settling, procuring notaries to affix their signatures for applicants who did not appear before them, bribing land office staff to hasten the selections improperly, and "corrupting forest officials" to recommend the inclusion of such selections within national forests. After conviction of Frederick Hyde and Joost Schneider four land officials were dismissed for being in the pay of the conspirators, and a forest superintendent, forest supervisor, and a number of other officials were discharged. Steps were being taken to halt further patenting of entries proved to be based on fraud and suits were pending to set aside the patents obtained by fraud.[65]

The principal beneficiaries of the forest lieu provision were the Santa Fe, the Northern Pacific, and the Southern Pacific Railroads whose alternate section land grants in arid mountain areas had little value. However, there seems no reason to think the railroads had any major part in placing the lieu land provision in the Act of 1897. The Santa Fe Railroad had 1,368,060 acres in two forest reserves in Arizona, part of which was too valuable for its timber to relinquish for scrip. Where the timber amounted to no more than 10,000 board feet to the acre, the Santa Fe was privileged to cut the timber, relinquish the land, and receive restricted scrip subject to entry only south of the Tehachapi Mountains in California. For relinquishing lands barren of timber the railroad received unrestricted scrip that was subject to entry anywhere on the unreserved public lands. Naturally, the unrestricted scrip brought the best price. The Santa Fe received 406,000 acres of restricted and 521,000 acres of unrestricted scrip. It sold 205,000 acres of the restricted scrip to J. J. Hagemann for $1.50 an acre and the balance to other persons for $2.50 to $3.50 an acre. For the unrestricted scrip it received as much as $16 an acre, though the average price obtained probably was

[64] A highly personal account of the Oregon land frauds which seems to comport with the facts as can be determined in other sources is S. A. D. Puter and Horace Stevens, *Looters of the Public Domain* (Portland, Oreg., 1908), *passim*. The lurid description of Puter's difficulties with the law and the easy way he cast blame on big lumber interests, while admitting his own misdeeds, seems to have persuaded historians to discard it as a source. *The Nation*, 80 (June 22, 1905), 492.

[65] Secretary of the Interior, *Annual Report, 1908*, pp. 99–101.

closer to $6 to $8 an acre, a remarkably good price when one considers the desert character of the land relinquished. Of the unrestricted scrip 92,103 acres were entered in northern California, (37,260 acres of which were entered by Thomas B. Walker), 81,652 acres in Oregon, 51,064 in Minnesota and, surprisingly for such high-priced scrip, 72,908 in Arkansas.[66]

Other railroads which exchanged barren desert or mountain land for the forest lieu scrip were the Southern Pacific in California (194,080 acres), the Union Pacific in Wyoming (12,250 acres), and the Oregon and California in Oregon (25,280 acres).[67] The Atlantic and Pacific Railroad which had earlier controlled a grant in New Mexico and Arizona had sold large blocks of land to the Aztec Land and Cattle Company (127,534 acres), to Dr. E. B. Perrin (132,461 acres), to the Saginaw and Manistee Lumber Company (39,956 acres), and to William P. Baker (76,790 acres). All of these owners exchanged their lands, which were useful only for grazing, for lieu scrip.

By 1904 the Northern Pacific Railroad had exchanged 108,240 acres within national forests in Idaho, Montana, and Washington for lieu scrip much of which fell to Weyerhaeuser companies and the C. A. Smith Timber Company. This railroad also benefited from a second lieu land provision written into an act for which there was considerable support outside of Congress: the act for the establishment of Mount Rainier National Park in the State of Washington. This Act of March 2, 1899, granted to the Northern Pacific Railroad the privilege of exchanging its alternate sections within the exterior boundaries of the park for either surveyed or unsurveyed public lands, not withdrawn and nonmineral, in any state into or through which its line ran.[68] Congress quite disregarded Binger Hermann's warning of October 1, 1898, that experience with the forest lieu land selections under the Management Act of 1897 showed that the law was:

> being taken advantage of in a speculative way by the holders of tracts acquired by purchase from States, railroad corporations, and other sources; that the lands relinquished have little or no value as timber or agricultural lands; and that tracts that once contained valuable bodies of timber, having been denuded of their value, are now offered to the Government in exchange for valuable lands elsewhere. . . .

Hermann warned that the right of exchanging worthless land within forest reserves for valuable land elsewhere that was virtually unobtainable in any other way "will lead to many propositions for the creation of reserves with the sole view of interested parties to acquire the right of lieu selection."[69] How right Hermann was! Within 6 months Congress created Mount Rainier National Park, making sure this time that the Northern Pacific Railroad, which was specifically named, could exchange its worthless land high on the mountain side for unsurveyed, as well as surveyed timbered land outside the park, a privilege not contained in the Act of 1897 but allowed by interpretation of the Department of the Interior. The act also extended to the Northern Pacific the right to exchange its alternate sections in the surrounding forest reserves for scrip.

Mount Rainier Park was a boon to the Northern Pacific Railroad, giving it the

[66] William S. Greever, *Arid Domain. The Santa Fe Railway and its Western Land Grant* (Stanford, Calif., 1954), p. 53; "Contracts in Forest-Reserve Timber Lands," *S. Doc.*, 61st Cong., 2d sess., Vol. 55, No. 612 (Serial No. 5654), pp. 209 ff. Here is a mass of material relating to the exchange of arid and cutover lands within the forests for valuable timberlands outside.

[67] Bureau of Corporations, *The Lumber Industry*, Part 2, pp. 55, 57, 90; *House Reports*, 58th Cong., 2d sess., Vol. 2, No. 445 (Serial No. 4578), pp. 15–16.

[68] 30 Stat. 993.

[69] *H. Doc.*, 55th Cong., 3d sess., Vol. 14, No. 5 (Serial No. 3756), pp. 89–90. A year later Hermann resumed his request for amendment of the lieu land provision. *H. Doc.*, 56th Cong., 1st sess., Vol. 17, No. 5 (Serial No. 3914), pp. 113–15.

privilege of exchanging 450,000 acres of nearly worthless land for timberlands in Oregon, some 200,000 acres of which were later acquired by Weyerhaeuser Companies.[70] Similarly the San Francisco Mountain Forest Reserve created by President Roosevelt just before Hermann's warning was delivered proved a boon.

Two other proposals for reserves subsequently came to the government from local interests motivated by questionable considerations. The more important one, and the one over which much lobbying was conducted, related to a private land grant made in the very closing days of Mexican control of California when Governor Pio Pico was trying to push fast the alienation of public lands before the completion of American conquest. Los Prietos y Najalayegua in the Santa Inez Mountains back of Santa Barbara, conveyed by Pico on September 24, 1845, and May 26, 1846, was so ill-defined, so questionable as to extent, location, title, and value that it was not presented to the Land Commission for confirmation and patent between 1851 and 1855. As late as 1864 it was conveyed for $100 and in 1865 for $1,000 to Thomas A. Scott, of railroad and oil company fame. What suddenly brought the claim to attention was the excitement over oil and mercury, both of which, it was thought, might be found on the tract. Since the time had long since passed in which the claim could be presented for confirmation and presumably all rights, vague as they were, had lapsed, the only way to revive it was by an act of Congress. In presenting the claim to Congress it was made to appear that the original owner still held it, and that his wife who died the previous year at 109 had planted a grapevine, now the largest in the world and producing six tons of grapes. Levi Parsons, who presented the claim for Tom Scott and others, had been involved in a dubious effort to have confirmed to parties he represented the whole waterfront of San Francisco and was not altogether well thought of in California because of "his wonderfully avaricious traits," said a local historian. However, Congress was sufficiently impressed to confirm the grant, presumably for 4 leagues or 17,826 acres.[71]

Then followed an effort by the new owners to enlarge the boundaries to 11 or 47 leagues and to twist the boundaries around in such a way as to include an area adjacent to Santa Barbara on two sides. A new survey seemed to uphold this absurd claim despite Mexican law that grants in excess of 11 leagues were illegal and without right. As a local writer said: "If the Mexicans had learned to dread American law as being a Pandora's box of evils, the Americans had learned to dread Mexican grants as a Trojan horse, which . . . had all manner of evils in its belly which were likely . . . to devour the substance of the country." After much turmoil, many indignation meetings in Santa Barbara, the repudiation by the original grantee, who was only 70, of the story of the grapevine and his virtual accusation that Parsons was mendacious, and the knowledge that neither oil nor mercury was to be found in the tract, interest in it subsided and in 1875, 11 leagues of 48,275 acres were patented, with boundaries confining the claim to an area between two ridges well back of Santa Barbara.[72]

In 1898 and 1899 Los Prietos y Najalayegua came back into the limelight when President McKinley proclaimed the Santa Inez Forest Reserve and the Pine Mountain and Zaca Lake Forest Reserve in the mountains back of Santa Barbara. Separating the two forests was the long narrow Los

[70] John Ise, *United States Forest Policy*, pp. 183–85; id., *Our National Park Policy*, pp. 119–22.

[71] Thompson and West, *History of Santa Barbara County, California* (Oakland, Calif., 1883), p. 199.

[72] Thompson and West, *History of Santa Barbara County*, pp. 199–209.

Prietos—"precipitous, canyon-gashed, and all too susceptible to raging brush fires". It contained but a slight amount of land suitable for irrigation, very few trees but much desert brush and was capable of supporting only a few head of livestock.[73]

Santa Barbara, whose growth depended upon finding a larger source of water than was then available, proposed to build a tunnel through the ridge back of the city to tap the water of the Santa Inez River. To do so it was necessary to get control of Los Prietos through which the river flowed for 23 miles and which was needed both for the water and for the location of the tunnel. The Santa Barbara Water Company did acquire 16,960 acres of the grant, while 31,760 acres were in the hands of Jed L. Washburn. At this point it appears that Washburn and the Water Company bethought themselves of the possibility of having Los Prietos included within the surrounding national forests. This move would kill two birds with one stone: it would facilitate Federal aid and possibly construction of a water storage project for Santa Barbara and it would make possible exchanging the nearly worthless land for the highly valued forest lieu scrip. Local pressure, including solid support of the full California delegation in Congress, resolutions of the Santa Barbara Common Council, the Los Angeles Chamber of Commerce, the Board of Supervisors of Los Angeles County, and numerous signed petitions had surely influenced McKinley in creating the two forest reserves in 1898 and 1899. Now the same procedure was to be tried on a larger scale, with more at stake.[74]

Led by Jed L. Washburn and the Santa Barbara Water Company, who offered in 1902 to convey the full Los Prietos rancho to the United States in return for unrestricted forest scrip that at $5 an acre might have been sufficient to carry through the water project, they marshaled a remarkable array of support. Resolutions and petitions reached the Interior Department from the following:

Santa Barbara Chamber of Commerce,
Santa Barbara County Board of Supervisors,
56 residents and landholders of Lompoc and Santa Rita Valleys,
33 residents and landholders of Santa Inez Valley,
Senator Thomas B. Bard,
600 electors of Santa Barbara County,
Private Secretary of Senator Bard,
Commissioner of Waterworks Department, Santa Barbara,
Jarrett T. Richards
Mayor of Santa Barbara and Members of the Chamber of Commerce,
Jed L. Washburn,
Santa Barbara Water Company,
Three representatives of committee of Ventura County,
Gifford Pinchot,
Acting Director, Geological Survey.

It was a telling campaign but it met opposition in Interior from both Binger Hermann and Secretary Hitchcock who questioned the legality of including within a forest reserve by proclamation such a large area which had passed into private hands. The lands it was proposed to include in the reserves were of little value and to give the owners the right to exchange them for forest lieu scrip was unwise, and would not improve the management of the sur-

[73] W. H. Hutchinson, *Oil, Land and Politics. The California Career of Thomas Robert Bard* (2 vols., Norman, Okla., 1965), II:183. For the location of Los Prietos between the two forests see map in *S. Doc.*, 61st Cong., 2d sess., Vol. 55, No. 612 (Serial No. 5654), opposite p. 101.

[74] The documents are all included in "Contracts in Forest-Reserve Timber Lands," *S. Doc.*, 61st Cong., 2d sess., Vol. 55, No. 612 (Serial No. 5654), pp. 95–99.

rounding reserves. It was pointed out that another pressure group in Oregon was seeking the addition of a solid area of adversely owned land to the Cascade Forest Reserve. It was asked why Santa Barbara did not buy the rancho which could probably be obtained for 25 to 50 cents an acre and give it to the Federal government. Despairing of winning the full privilege of exchanging their land for scrip, Washburn and the Water Company in 1903 offered to accept scrip subject to entry only on nontimbered land and Washburn gave one person to believe he would enter his scrip in South Dakota. Binger Hermann continued to oppose the inclusion of Los Prietos in the two reserves, and Hitchcock supported him until Hermann resigned. But when Gifford Pinchot was brought into the picture and recommended the inclusion of Los Prietos in the surrounding reserves the new Commissioner, W.A. Richards, Hitchcock, and President Roosevelt agreed to the order. On December 22, 1903, the Santa Inez and the Pine Mountain and Zaca Reserves were consolidated in the Santa Barbara Forest Reserve and included within it was the privately owned Los Prietos.[75]

The Los Prietos case shows in detail the danger resulting from loosely drafted legislation, and the way loopholes were taken advantage of by special interests with strong political backing. The privilege the people of Santa Barbara wanted could have been gained by special legislation and without the special bonus individuals obtained through the Forest Lieu Act.

In summing up the government's unfortunate experience with the lieu land provision in April 1904, before all the damage the government was to sustain by it had yet become clear, Commissioner W. A. Richards declared that "comparatively few actual settlers have taken advantage" of the right that, he might have said, was ostensibly adopted for them. The land grant railroads were the principal beneficiaries and next to them were speculators who acquired control of the state school lands within the forest reserves for exchange. Some 343,907 acres of school land in California and Oregon had been so bought and exchanged, a considerable part of which was carried through by fraud. Richards went on to say that the government had acquired in the exchange large areas which were neither generally timbered nor "of any considerable value for water conservation, or for any other purpose contemplated by the forest-reserve law. . . ." [76] It is impossible to find in Federal legislation a more one-sided and unfair exchange provision which dealt private interests all the high cards.

The total amount of land within forest reserves and national parks permitted to be exchanged for timberland and other land outside the reserves does not appear large in comparison with the acreage conveyed to private ownership under the Timber and Stone Act. Its importance lies in the fact that the unrestricted scrip could be used for a time to acquire the best remaining unsurveyed land, whether water holes that could control the pasture on thousands of acres, richly endowed redwood lands in Humboldt County, California, or

[75] 32 Stat., Part 2, p. 2327. By agreement with the GLO Commissioner, Washburn and Water Company scrip was subject to location on nontimbered land without restriction as to location. It was used to enter land in 15 states, the largest entries being 13,753 acres in Montana, 12,134 in Oregon, 9,299 in Washington, 3,942 in North Dakota, 3,516 in Wyoming, 1,474 in Idaho and 1,261 in Nevada. The many petitions and other documents concerning the efforts of Washburn to secure a reversal of Hermann's opposition to including Los Prietos in the Santa Barbara Forest Reserve and other details concerning the relinquishment of land for the Forest Lieu Scrip are in *S. Doc.*, 61st Cong., 2d sess., Vol. 55, No. 612 (Serial No. 5654).

[76] "Selection of Timber Lands in Lieu of Lands in Forest Reserves," *House Reports*, 58th Cong., 2d sess., Vol. 6, No. 2233 (Serial No. 4582), pp. 1–3.

the best of the white pine lands of Minnesota. In 1907 it was reported that applications for the exchange of 2,786,471 acres of relinquished lands had been received, 1,988,089 acres had been approved and exchanges patented, 193,464 acres had been rejected, and 604,918 acres were pending.[77]

No law was more disliked in the western public land states than the Forest Lieu Act, perhaps because it provided outsiders, like the Santa Fe Railroad and the Aztec Land and Cattle Company, with scrip that cost them little and enabled them to acquire land not open under normal conditions to local lumbermen. Binger Hermann who surely represented the western position in land matters early revealed this dislike. Despite his recommendations for amendment or repeal, Hermann seems to have become involved in approving questionable issues of scrip to the land rings in Oregon and California and, being under fire, was permitted to resign. His successor, W. A. Richards, Secretary Hitchcock, and President Roosevelt convinced Congress that the country had had enough of the Forest Lieu Act and the corruption which had surrounded its operation from the very beginning. On March 3, 1905, Congress repealed the act while providing that the validity of all contracts entered into by the Secretary of the Interior for exchange should not be impaired. This provision saved the rights of owners of land in two forests in Arizona and one in California to obtain lieu land.[78]

Investigations of Timberland Frauds

When one of Theodore Roosevelt's plans, policies, commissions, or most favored appointees came in for severe attack in Congress, the President tried to divert attention by raising other controversial questions that contributed to the excitement of the time. One such diversionary tactic was used in 1906 and 1907. Western Senators were carping at Pinchot and a congressional resolution (whether introduced at the suggestion of the President or not cannot be determined), called upon the Bureau of Corporations, Departments of Commerce and Labor, to investigate the lumber industry to determine whether there was a conspiracy to regulate prices, contrary to the Sherman Anti-Trust Law.[79]

There was no reluctance on the part of the Bureau to make the investigation. It set about the task with vim. The huge amount of data it compiled showed that, though there were great holdings of timberland, there were also many small companies and nothing comparable to a monopoly existed. The Weyerhaeuser Companies were found to have 1,525,000 acres purchased from the Northern Pacific Railroad—a major beneficiary of the forest lieu scrip and Mount Rainier lieu scrip—Thomas B. Walker had 760,000 acres of sugar pine in California, and the Amalgamated Copper Company owned a million acres of Montana timberland. The reports of the Bureau managed to bring out by implication, if not otherwise, that the Weyerhaeusers, Walker, and other large holders had worked through agents, or others who were using dummy entrymen under the Timber and Stone Act and the Homestead Act, to acquire heavily timbered lands in Washington, Oregon, California, and Idaho. There is abundant evidence that these and other large timber buyers were the beneficiaries of laws intended for the use of actual settlers, laws which often were being fraudulently used.[80]

The Bureau's reports offer an overall critique of Federal policy toward the tim-

[77] Secretary of the Interior, *Annual Report, 1907*, p. 258. These figures are only for lands acquired under the Act of 1897.

[78] 33 Stat., Part 1, p. 1264.

[79] *Cong. Record*, 59th Cong., 2d sess., Dec. 13, 1906, Jan. 18, 1907, pp. 352–54, 1330–33.

[80] One of the great gaps in American historical writing is a frank, honest, and nonapologetic history of the lumber industry.

berlands that is both devastating and, in view of the failure of Congress to make changes for many years thereafter, disillusioning. The strongest criticisms were directed at the application of homestead laws to timbered areas wholly unsuitable for farming and the inclusion of timberlands in the grants to railroads and wagon road companies. The result had been extensive acquisition of timberland by companies such as Weyerhaeuser of great stands of redwood, Douglas-fir and other valuable trees for no more than $2.50 an acre when they were worth five and ten times as much. By indirection, the reports criticized the weak and inept administration in the Land Office and the unimaginative and uncritical leadership in Congress that had permitted errors of the past to be compounded over and over again. Allusions were made to southern pine lands selling for $60 an acre, Douglas-fir for $100 to $200, and redwood for "hundreds of dollars" an acre for which the government had received $1.25 to $2.50 an acre. The report was particularly severe on those persons who, under the guise of friendship for the "actual settlers," were trying "to secure the transfer of public timberlands to private owners under . . . pleas . . . wholly specious and insincere. . . ." One notable case was cited of the elimination of 705,000 acres from the Olympic National Forest because it was said to be chiefly valuable for agriculture. As events turned out—and should have been anticipated—523,720 acres quickly fell to timberland speculators, not farm makers. In 1910 there were 100 "homesteaders" on the balance of the land and they had a mere 570 acres in cultivation. Unfortunately for those advocating reform in government land policies information in the reports that would a few years earlier have been useful in quieting the opponents of forest conservation and land reform hardly caused a ripple of public interest in 1914.[81]

This history of the framing and administration of public land policies is not primarily or even largely concerned with individuals. They have been mentioned only when they have been influential in shaping policy. Bickering among bureaucrats and the political narrative have no place in it. Mention is therefore made of the Ballinger-Pinchot controversy and the extensive literature on it only in passing. Pinchot and Ballinger as respective heads of the Forest Service and the Department of the Interior were both replaced by men strongly inclined toward conservation, and indeed close associates of Pinchot. Except for the reduction of acreage within the forests, no marked effort was made to turn the clock back.[82] True, some of the withdrawn min-

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[81] Bureau of Corporations, *The Lumber Industry*, Part 1, "Standing Timber" (1913), pp. xiv, xix. Other parts are 2, "Concentration of Timber Ownership in Important Selected Regions," 3, "Land Holdings of Large Timber Owners" (1914), and 4, "Conditions in Production and Wholesale Distribution including Wholesale Prices" (1914). John Ise summarized much of the information in these reports, in *United States Forest Policy*, pp. 315 ff.

[82] One writer makes the interesting point that Pinchot "continued his personal influence in the Forest Service" being a "self-styled watchdog of forestry and of conservation in general." Donald C. Swain, *Federal Conservation Policy, 1921–1933* (Berkeley, 1963), p. 11. Also see Henry Clepper, "The Forest Service Backlash," *Forest History*, XI (January 1868), 6–15. The Ballinger–Pinchot controversy has attracted more attention than any other aspect of conservation history, partly because Gifford Pinchot —one of the most dramatic figures in American history—was deeply involved and never during his lifetime let the country forget it, and also because it was a part of the conflict between progressives and conservatives. On the one side were arrayed Richard A. Ballinger, Secretary of the Interior, supported by President William Howard Taft, Attorney General George W. Wickersham, and the prevailing Republican majority in the Congress and on the other Pinchot, Louis Brandeis, a number of able journalists and attorneys, and Progressive leaders. The 13-volume *Investigation of the Department of the*

eral and forest lands were restored to the public domain but the haste in ordering the withdrawals undoubtedly had led to the inclusion of some lands that were suitable for agriculture and might better have been left outside the reserves. The crusading ardor of Theodore Roosevelt and Gifford Pinchot in behalf of conservation was

STATUS OF NATIONAL FORESTS, 1909–1913

Year	Number of Forests Enlarged	Number of Forests Reduced	Increase or Decrease in Total Acreage
1909	34	10	+26,528,439
1910	6	26	— 1,574,128
1911	43	61	— 2,322,954
1912	22	53	— 3,201,867
1913	12	27	— 789,728

Compiled from data in GLO *Reports*, 1909–1913.

not matched during the administration of his successors until another Roosevelt took over the White House. Yet it should be pointed out that Walter L. Fisher, Secretary of the Interior, in 1911 took a thoroughly Rooseveltian position in opposing the alienation of either forest or cutover land not adapted for agricultural uses. "The fact that purchases must now be made in the Appalachian Mountains . . . shows how unwise it is for the government to dispose of such lands to private individuals." From 1909 to 1933, the Forest Service was consolidating the gains it had made, bringing its forests into effectively administered units, and experimenting in a limited way with new techniques.[83]

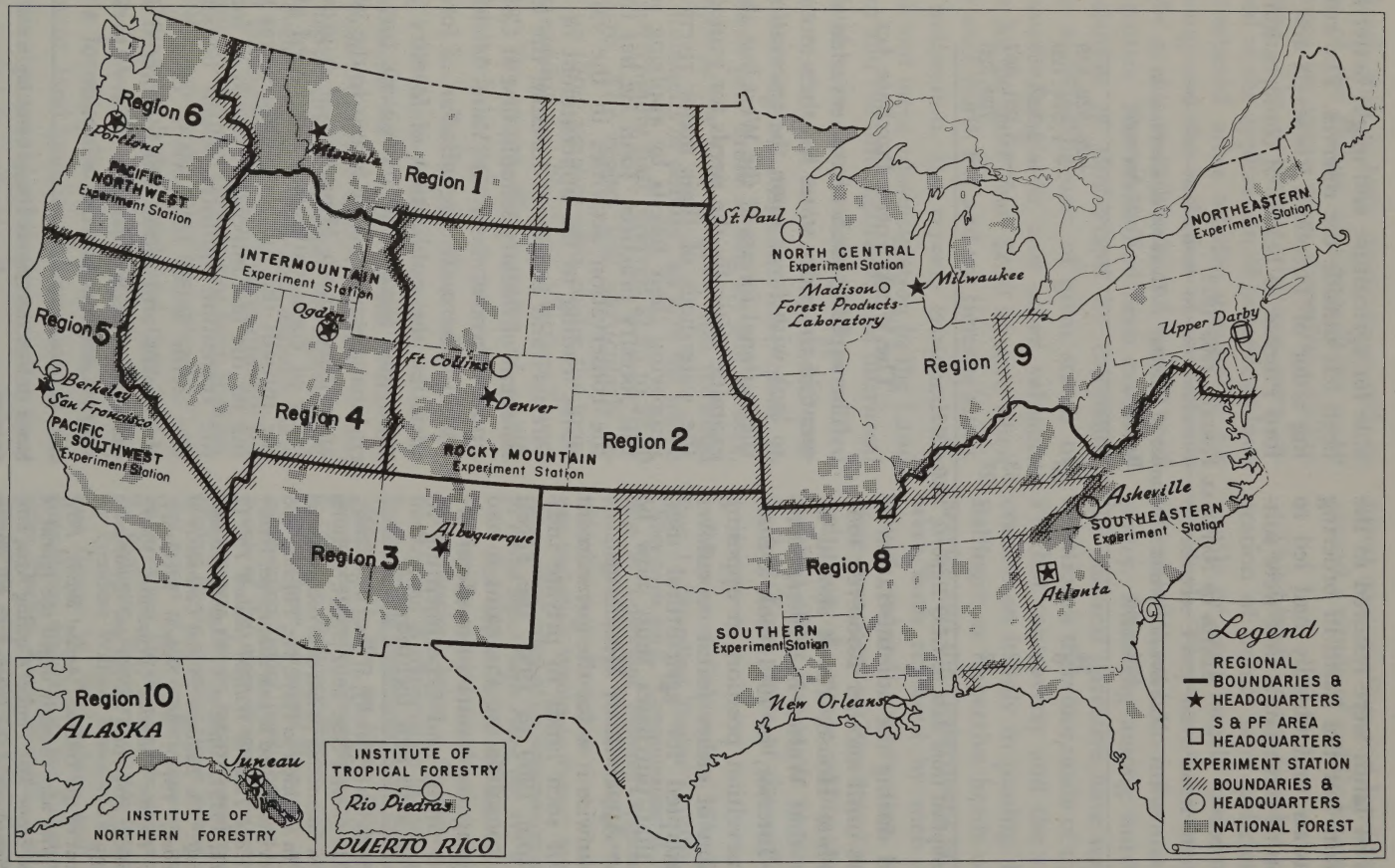
The Weeks Forest Purchase Act

The rapid growth of conservation sentiment in the older states led them not only to look with favor upon the reservation of the national forests of the West but also to examine critically the needs for protecting the watersheds of their major rivers and improving their forests by applying scientific forestry practices. John Ise has traced the conservation activities in the various states leading to the appointment of state foresters and boards of forestry, the establishment of forestry schools, first at Cornell under Fernow, later at Yale, Michigan, and elsewhere, the organization of forestry societies, the publication of forestry journals, and finally the movement for Federal management of the forests in the White and Appalachian Mountains.[84] A growing body of conservationists, concerned about the inroads the lumber industry was making on the last important stands of forests, the recreation industry which bemoaned the scenic losses lumbermen caused, and the towns and cities which suffered from periodic floods brought heavy pressure upon Congress for the adoption of a pro-

Interior and of the Bureau of Forestry, *S. Doc.*, 61st Cong., 3d sess., No. 719 (Serial Nos. 5892–5903), includes some of the most fascinating passages in congressional investigations. In addition to Hays, Ise, Pinchot, and Richardson previously cited in this chapter see Henry F. Pringle, *Life and Times of William Howard Taft* (2 vols., New York, 1939); Alpheus T. Mason, *Bureaucracy Convicts Itself: The Ballinger Pinchot Controversy of 1910* (New York, 1941); M. Nelson McGeary, *Gifford Pinchot: Forester Politician* (Princeton, 1960); and James Penick, *Progressive Politics and Conservation* (Chicago, 1968).

[83] Department of the Interior, *Annual Report*, *1911*, Vol. I, p. 8. Fisher also strongly urged the repeal of the Timber and Stone and Timber Cutting Acts, empowering the Secretary of the Interior to sell timber on public lands, and the leasing of the public rangelands to halt the serious abuses resulting from overgrazing.

[84] Ise, *United States Forest Policy*, pp. 143–50.



Administrative Regions and Experiment Stations of the Forest Service, U.S. Department of Agriculture

U.S. Forest Service

gram to create and preserve national forests in New Hampshire, the Southern Appalachians, the Ozarks, and in Minnesota. Some support was given also by people who cared little for conservation but liked the idea of having government money spent in their midst. Unlike the situation in the West, where there had been bitter opposition to the establishment of national forests, in the East there was no antagonism other than the usual opposition from those who dislike anything new, and from those who feared the proposed Federal policy marked a step toward socialism, or that if carried out logically in the future it would entail the expenditure of huge sums of money. In the discussion in both the 2d and 3d sessions of the 61st Congress it was conceded by the opposition that the measure had wide popular support, and the Senate vote indicates this (57-9), though the House vote in the previous session was closer (130-111).[85]

The Weeks Forest Purchase Act of March 1, 1911 (named after its sponsor in the House, John W. Weeks of Massachusetts), was an epoch-making step authorizing the Forest Service to acquire and manage forests in states either too poor or too uninterested to undertake extensive forest acquisition and management programs on the watersheds of interstate rivers. Before any purchases could be made the legislature of the state "in which the land lies shall have consented to the acquisition of such land. . . ." A National Forest Reservation Commission, composed of the Secretaries of War, Interior, and Agriculture, and two members of each House of Congress was required to pass upon selections of land initiated by the Secretary of Agriculture and approved by the Geological Survey. And to make the overlapping functions even more cumbersome all titles had to be approved by the Attorney General. For the protection of watersheds of navigable rivers the act sanctioned the cooperation of states with each other and with the United States and authorized appropriations of $1 million the first year and $2 million for each of the next 5 years for survey and purchase of land. Five percent of the proceeds from the sale of timber in the forests was to be paid to the states in which the land was located for public schools and roads.[86]

Sensing the concern of many people in New England and the Southern Appalachian states for protection of the watersheds and of specially attractive wilderness areas, Congress had appropriated money to the Forest Service in 1908 for a reconnaissance survey to determine what part should be permanently forested. After what must have been a fairly quick reconnaissance Pinchot came up with an estimate of 23 million acres in the Southern Appalachians and 2 million acres in the White Mountains and recommended the purchase of 5 million acres in the South and 600,000 acres in New Hampshire and Maine.[87] Within a year after the adoption of the Weeks Act the Forest Service had 35 examiners searching through the two regions for forested lands most appropriate for the purchase program and in 1912 was in process of acquiring 257,228 acres in eight purchase units in New Hampshire, Virginia, Tennessee, North Carolina, and Georgia. Other purchase units had been outlined in Maryland, West Virginia, and South Carolina. The Forest Service took care to prevent intermediaries getting options on land with a view to selling it at a higher price to the government by announcing that no optioned land would be purchased. The first year the prices paid ranged from $1.16 for land well culled for its timber to $15 for

[85] *Cong. Record*, 61st Cong., 2d sess., June 24, 1910, p. 9027 and 61st Cong., 3d sess., Feb. 15, 1911, p. 2602.

[86] 36 Stat., Part 1, p. 961; Darrell H. Smith, *The Forest Service. Its History, Activities and Organization* (Washington, 1930), p. 42.

[87] *Report of the Forester, 1908*, p. 29.

virgin timberland. The average price was $5.95. Moderate appropriations made for slow progress in acquiring land so that by 1921, when additional purchase units had been established in Pennsylvania, Alabama, and Arkansas amounting to 9,225,000 acres, only 1,613,845 acres had been acquired. In 1933, with eight more states authorizing the creation of Federal forests the total acreage bought had reached 4,532,698 acres, with the largest holdings in Virginia, New Hampshire, and North Carolina.[88] This was a far cry from the acreage the Copeland Report of 1933 said should be in public ownership.

Between the adoption of the Weeks Act in 1911 and the Clarke-McNary Act in 1924, advocates of two sharply defined theories concerning the role of the Federal government in forest management and protection clashed at the meetings of forestry associations, in their journals, and in Congress. The first, the traditional theory of the conservationists, whose spokesman was Gifford Pinchot, was that the increasing consumption of timber, together with the heavy losses from fire, disease, and insects so threatened the future supply of timber that more drastic action than thus far adopted was essential. The drastic action might have included extensive purchasing of timbered and cutover lands but this appeared unrealistic in view of the costs. Instead, it was proposed to require by national legislation that lumbermen should follow forest management practices on their privately owned lands, somewhat similar to those enforced in the national forests. The generation of foresters who had grown up with and been influenced by Pinchot might agree with him in the pursuit of these goals, but a new and younger group was coming to the fore who believed it possible to cooperate with private management, to secure the goals of conservation without compulsion. The leader of this group was Colonel William B. Greeley, who became Chief Forester in 1920.[89]

Well before 1924, leaders in the lumber industry had become aware of the need for protecting their timberlands from fire, diseases, and insects, for nurseries to provide seedlings for reforestation where natural regeneration did not follow clearcutting, for cutting practices that would permit long-range milling operations in a restricted area, and for the employment of professional, trained foresters to aid in planning all these operations. Pinchot himself, in his earlier years as chief of the Division of Forests in the Department of Agriculture, had tried to aid the large owners of timberland to establish these desirable practices but had become disillusioned with their slow response and was convinced that compulsion was the only way to achieve the desired results. Well before 1924 Greeley had been advocating a policy of cooperation with lumbermen but is pictured by a recent student, as also in these early years, advocating additional purchases of forest lands, extension of public management to all Federal forest lands and the acceleration of research and of road construction.[90]

An important provision of the Weeks Act authorized an appropriation of $200,000 annually for protection from fire in such

[88] *Reports of the Forester 1912*, pp. 73–74; *1921*, p. 10; *1933*, p. 15.

[89] Greeley's own account of the early days of the Bureau of Forestry under Pinchot and his remarkable tribute to his predecessor is worthy of quotation: "G.P. had the happy faculty of inspiring his young Forest Service with the same spirit of team play in everything we undertook. . . . One of G.P.'s finest qualities was his capacity to understand and work with men whose background was totally different from his own. . . . Around the solid, realistic job of protecting and administering a hundred millions acres of federal forests and ranges Gifford Pinchot built an organization of three thousand people and inspired it with genuine zeal for public service. He made crusaders of all. . . . He made the merit system of Civil Service a vital, living thing." Greeley, *Forests and Men*, p. 66.

states as should match the Federal allotment. Greeley was anxious to broaden this first step in the direction of sharing responsibility with the states by including as a third party the private owners. Only in this way, he believed, would it be possible to secure the desired results that compulsion was unlikely to achieve. Locked in combat for a time were the ultra-conservationists, followers of Pinchot, who wanted to force scientific forestry practices upon private industry and who may not have been altogether aware how far some lumber companies had already gone in this direction, and the moderates who followed Greeley and were led in Congress by Senator Charles L. McNary of Oregon who preferred cooperation between the Federal and state governments and private owners of forest lands.

The Clarke-McNary Act

As finally adopted in 1924, the Clarke-McNary Act borrowed from the Weeks Act the matching feature whereby the Federal government would equal state (and private) funds to provide support for cooperative fire protection, the distribution of seedlings for reforestation, studies of taxation of forest land, and aid to farm owners in developing their small woodlots by modern forestry practices. The act also broadened the authorization in the Weeks Act for the purchase of forest land so as to permit the Federal government to acquire land for national forests regardless of its location on the watersheds of navigable rivers.[91] Discussion in both the Senate and the House reflects a sense of emergency and of strong support for the measure throughout the country. Opposition was slight.[92]

The Copeland Report

With the coming of the depression, the thoughts of social planners turned to means of halting the downward spiral of prices and economic activity. One method was to undertake large public works and relief programs. The public lands, the national forests, the national parks, and their many needs came in for fresh attention. One of the first evidences of this renewed interest was the preparation of the *National Plan for American Forestry*—the Copeland Report, named after Senator Royal Copeland who introduced a resolution calling for the study—which Henry Wallace, Secretary of Agriculture, presented to the Senate on March 27, 1933. This two-volume study of 1,651 pages with index, had not been cooked up over night with the coming into power of the Democrats. It was a reasoned, carefully considered, and greatly detailed investigation of the problems of public and private forest management. One can see in Wallace's letter of transmittal that the Forest Service had moved away from the emphasis upon cooperation with private holders of forests that Greeley favored to the earlier position of Pinchot—that government, i.e., the Federal government, must provide aggressive leadership in bringing modern forestry practices to the United States by acquiring additional forest land on which to establish these policies, by promoting through subventions to the states greater participation in these policies, and by inducing or compelling private management to follow the best practices. Permeating the entire report is the view expressed on page 59: "It is difficult to escape the conclusion that there is nothing in past experience or definitely in sight for the future which gives reason for hope that

[90] Swain, *Federal Conservation Policy*, p. 14.

[91] Act of June 7, 1924, 43 Stat., Part 1, p. 653. William B. Greeley who guided the Senate Select Committee on Reforestation which conducted 24 hearings in the West on plans that developed into the Clarke–McNary Act gives interesting background information in *Forests and Men*, pp. 101–111.

[92] *Cong. Record* 68th Cong., 1st sess., *passim.*

private ownership can be depended on for anything approaching the contribution to American forestry that has been expected of it during the past 20 years."

The Copeland Report was a blueprint for reorganizing the forestry practices of Federal, state, and private owners, and a rededication of the Forest Service to the principles of conservation and public welware of Gifford Pinchot. That the Forest Service could draft such a forward-looking and yet practical plan 23 years after the dismissal of Pinchot suggests that the spirit he had instilled in the Service was unconquerable. The report analyzed in great detail the condition of forestry in the United States, brought out its successes and failures, and emphasized the necessity for a big new start to make up for the lack of progress in the past two decades. Specifically, it recommended that public ownership of forest land, state and Federal, be increased by 224 million acres, of which 194 million should be commercial forest lands and 30 million acres noncommercial timberland. Acquisition should include 32 million acres of abandoned farms that ought to be reforested. Of the total 224 million acres, state and Federal, 177 million were recommended for acquisition in the East and 47 million in the West. This was a long-range program that was intended to extend over as much as 20 years. For the first 5 years an appropriation of $30 million a year for acquisition of land was recommended. Other additional appropriations were recommended for management, protection from fire and disease, recreation within the forests, and aid to the states in carrying their share of the expanded program. Cooperation between the Federal and state governments was to be encouraged in every part of the plan.[93]

The *National Plan for American Forestry* with its proposal for a land purchase program far larger than had been made possible by the Weeks Act, and one that was to include farmland going out of cultivation, and the expanded program for fighting fires and the diseases and insects that were destroying large amounts of timber, struck a responsive chord in Franklin Roosevelt who was a thoroughgoing believer in and practitioner of conservation. Agriculture in the hill areas of the Northeast had been contracting for more than half a century, leaving behind thousands of abandoned farms, which were growing up to sumac, gray dogwood, and pasture pine, badly weeviled. Now, with the market for American farm products contracting and farming becoming more efficient through the use of gasoline powered implements, many additional small farms in the hill country were becoming uneconomic units. The *National Plan* with its proposal for the inclusion of 32 million acres of abandoned farms into units where modern forestry could be practiced, became the basis of the submarginal land retirement program of Rexford Tugwell, L. C. Gray, and others of Roosevelt's advisers who were seeking solutions for the plight of America's farmers in a depression so bad that many were on bread lines. Equally attractive to the President was the opportunity of using the unemployed in work camps in the forests and parks of the country to fight fires, blister rust, and other diseases and injurious insects, construct trails and fire lanes, reforest cutover areas, build erosion restraining dams on mountain streams, construct fences to aid in controlling grazing in the forests and in the newly established grazing districts of the public lands, eliminate poisonous weeds such as halogeton that were dangerous to livestock, reseed the overgrazed rangelands, erect and maintain telephone lines, and build public camping facilities.

[93] *A National Plan for American Forestry, S. Doc.*, 73d Cong., 1st sess., No. 12, Vol. 1, pp. 64, 69.

Conservation Programs in Depression Years

The first of these two programs to get under way was the Civilian Conservation Corps into which were inducted at its highest level 502,000 men 18 to 25 years old for work in the national, state and local forests, parks, and other public lands. Before the CCC was disbanded with the coming of World War II it had accomplished more to protect and develop the forests and parks in the country than all previous action programs had done.[94]

Early 20th century Americans exhibited a marked tendency to favor proposals for government purchase of land for forestry, conservation, and recreation purposes, as shown by the general approval of the Weeks Forest Purchase Act, two major authorizations by the people of New York for expensive additions to state, county, and municipally owned land for recreational purposes, and projects in the Lake States for taking over tax delinquent land, and purchasing land to establish state forests on cutovers that were producing little or no useful timber. To these should be added the Submarginal Land Retirement Program of the New Deal which had as its prime objective the purchase and retirement from farming of unprofitable, badly eroded, thin-soiled and exhausted land and the removal of the occupants to other more promising areas where they could be rehabilitated and thus taken off the relief roles. The land was to be used either for growing tree crops, for recreation, for wildlife refuges, or pasturage under grazing controls. To prepare the way for a large-scale program of land retirement that might involve as many as 450,000 farmers, the New Deal planners had President Roosevelt set up the National Resources Board, financed with emergency funds under control of the President. The board called upon experts from several bureaus in the Departments of Agriculture and Interior, including the Forest Service, the Bureau of Biological Survey, the National Park Service, the Office of Indian Affairs, the Bureau of Agricultural Economics, and from state forests, parks and agricultural colleges. From the plethora of recommendations received it drafted its program for land acquisition through the Submarginal Land Retirement Plan of the Agricultural Adjustment Administration.

The Resources Board recommended the retirement of 454,200 farms comprising 75,345,200 acres having an estimated value as of 1934 of $682,090,000, including 50,300 farms containing 6,534,500 acres in the Northeast, 248,200 farms containing 19,443,700 acres in the Southeast highlands, 58,000 farms containing 5,265,600 acres in the cutover regions of the Lake States and the Atlantic and Gulf Coast, and 26,000 farms containing 28,365,900 acres in the western Great Plains. Appropriations were not forthcoming for such an enormous purchase program and the proposals had to be scaled down. Each of the Federal land administering agencies made their proposals as to how the total sum available could best be shared.[95] The Forest Service went far beyond making proposals for the use of the land retired from farming by advocating that the national forests should be increased by 130 million acres, 34 million of which might come from retired farms, 14 million acres from the public domain and the balance purchased. It was particularly anxious that land in the Pacific Northwest containing 90 billion board feet of standing timber should be placed under its jurisdiction. This amount of land

[94] John Jacob Saalberg, "Roosevelt, Fechner and the CCC—A Study in Executive Leadership" (Ph.D. dissertation, Cornell University, 1962); John A. Salmond, *The Civilian Conservation Corps, 1933–1942: A New Deal Study* (Durham, N.C., 1967).

[95] "Maladjustments in Land Use in the United States," part vi of the *Report on Land Planning of the National Resources Board* (1935), p. 49.

might have come through the transfer to the Forest Service of the forfeited Oregon and California Railroad lands.[96] The Forest Service also recommended that the area of forest land in state ownership be increased from 16 million to 77 million acres by 1960.[97]

These extensive recommendations for withdrawing land from cultivation, removing farmers to other tracts, and acquiring large acreages for the Federal government's forest program and for other agencies met with no great favor in Congress, particularly from some of the states which, the Resources Board Report seemed to indicate, had large areas that were submarginal. Emergency funds allocated to the land program by the Executive branch carried the programs along for a time but congressional appropriations were less generous. James A. Maddox in his study of "The Farm Security Administration" has shown that a total of $95,208,467 was made available for land purchases from emergency funds and from specific appropriations by Congress and that on June 30, 1943, Congress prohibited the use of Federal funds for further purchases.[98] The total quantity of land placed in national forests by 1950 which had been acquired under the Weeks Act, the land purchase program of the 1930's, and by exchange was 21,582,584 acres—still far from the goal of those who had first persuaded the government to buy land for expansion of its forest conservation program. In addition to this total, the Soil Conservation Service held 7,014,347 acres, acquired under the land purchase program, part of which was later to be transferred for administrative purposes to the Forest Service to be operated as national grasslands.[99] While these totals were well short of the goals of the Copeland Report and the report of the Land Planning Committee, a later generation was to concede that the proposals of these reports had not been very realistic both with respect to submarginal land and the extent to which Americans wanted privately owned land to pass into government ownership.

Interior Timberlands Jurisdiction

The transfer of the forest reserves to the Department of Agriculture in 1905 left considerable timberland under the jurisdiction of the General Land Office.[100] This was estimated many years later (in 1960, when the quantity had been reduced) at

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[96] *National Resources Board Report*, 1934, Part 2, "Report of the Land Planning Comittee," pp. 209–213. In 1940 the Forest Service through L. F. Kneipp, Assistant Chief, reported there were 52 million acres of private and state owned land within the national forests and purchase units of which 36,155,000 should be administered by the Federal government if the best and most economical administration was to be accomplished. In addition, Kneipp showed by map some 55 million additional acres which he thought should be in national forests. The cost was estimated at $575,406,000. "Forest Lands of the United States," *Hearings Before the Joint Committee on Forestry, Congress of the United States*, 76th Cong., 3d sess., (Washington, 1940), Part 7, pp. 1977–78.

[97] John Kerr Rose, "Survey of National Policies on Federal Land Ownership with Special Reference to Studies Conducted by Committees of the Congress or Commissions of the Executive Branch of the Federal Government," *S. Doc.*, 85th Cong., 1st sess., Vol. 1, No. 56 (Serial No. 11992), p. 39.

[98] Ph.D. dissertation, Harvard University, 1950, pp. 31, 96.

[99] R. D. Davidson, *Federal and State Rural Lands, 1950, with Special Reference to Grazing* (Washington, 1952), p. 4. In 1952 3,803,656 acres were managed by the Forest Service as "national grasslands," mostly in North and South Dakota, Wyoming, Nebraska, Kansas, Colorado and Texas. Forest Service, *National Forest Areas* (1962), pp. 1, 8. The increase of land in the national forests by purchase and exchange to 1930 was 3,700,000; in 1930 to 1934 it was 2,800,000; from 1935 to 1939 it was 12,892,000; from 1940 to 1944 it was 3,051,000; and from 1945 to 1949 it was 1,839,000 acres. Forest Service, *Timber Resources for America's Future* (Washington, 1958), p. 315.

[100] Secretary of the Interior, *Annual Report, 1960*, p. 257.

33 million acres, 4 million of which were classified as commercial forest lands and 29 million as "woodland." Pilferage on these lands as well as licensed cutting continued, and to prevent illegal cutting of timber or illegal entries it was necessary to continue the staff of investigating agents. Timber and Stone Act entries continued to be so large that local officers either could not or would not give them the proper critical examination to make sure they were not being filed by dummies for large investors or lumbermen. In addition the Land Office was charged with responsibility for the management and sale of large acreages of forest lands—or of timber upon them—belonging to various Indian tribes. The first year after the adoption of the Transfer Act of 1905, 324 cases of timber trespass were reported on the public lands involving a total value of $397,178. Sixty-three civil suits and the same number of criminal prosecutions were recommended to the Attorney General's office, and compromises were made with other offenders.[101] Whatever the preference of its higher officials and of Congress, the Department of the Interior, while primarily concerned with making possible the alienation of the public lands to private ownership, was still, notwithstanding the transfer of the forest reserves, involved in managing forest lands.

Richard Ballinger, who became Commissioner of the General Land Office in 1907, in his first report said that he was making "the most rigorous effort" to restrain unlawful cutting on public timberlands but the field force was totally inadequate to reach all such offences and was therefore concentrating on the more gross violations. During the single year he administered the office, the number of timber and stone entries more than doubled, possibly because some land held for forest reserves was released and opened to entry under this act. Fred Dennett, who followed him in 1908, determined that the $2.50-an-acre price established in the Timber and Stone Act should be the minimum price and that the timber on land sold under the act should be appraised and sold at the value thus determined. As the accompanying table shows, this brought about a somewhat better price but since the best of the timberlands were either in reserves or had been sold it was too late for the government to benefit much from this decision. Furthermore, certain kinds of scrip like Valentine, Soldier's Additional Homestead, and Forest Lieu could still be used without the payment of any additional amount because of the high appraisal.[102]

It is not easy to reconcile the fact that in the years of the Theodore Roosevelt administration, when there was so much talk about forest conservation and saving the public lands for actual settlers, some of the greatest abuses of the public land system occurred, and 61 percent of the entries under the Timber and Stone Act were made. This is the more difficult to understand in the light of the frequently reiterated statements by the Commissioners of the General Land Office, the Secretaries of the Interior, and the Public Land Commission of 1904 that the act had no justification and should be repealed. Lands which an investigating agent declared were worth $20 an acre at the time they were entered brought only $2.50 until 1910.[103]

In 1906 Congress appropriated $250,000 for protection of timber on the public lands and for detecting fraud in the administration of the entry laws. This sum was clearly inadequate but was only slowly increased, since the need was less, the better lands that might invite fraud having already been alienated. Other appropriations brought

[101] *H. Doc.*, 59th Cong., 2d sess., Vol. 14, No. 5, pp. 341, 345, 381.

[102] Department of the Interior, *Annual Report, 1909*, pp. 68–69.

[103] Bureau of Corporations, *The Lumber Industry*, Part 1, p. 265.

TIMBER AND STONE ENTRIES[a]

Year	Number	Acres	Year	Number	Acres	Average Price
----	----------	----------	1901	3,031	396,445	----------
----	----------	----------	1902	4,022	545,253	----------
1884	----------	339,419	1903	12,249	1,765,222	----------
1885	1027	139,301	1904	9,435	1,206,261	----------
1886	429	50,693	1905	5,188	696,677	----------
1887	655	80,622	1906	5,037	647,997	----------
1888	2420	341,968	1907	11,092	1,444,574	----------
1889	2361	334,519	1908	11,719	1,437,431	$2.50
1890	3454	509,896	1909	6,007	722,893	2,49
1891	1849	259,913	1910	1,453	170,989	3.28
1892	1006	137,538	1911	1,343	143,456	4.02
1893	1382	182,341	1912	2,189	189,198	2.12
1894	1259	153,081	1913	846	100,532	3.10
1895	627	70,066	1914	791	64,082	5.60
1896	559	66,182	1915	1,145	65,634	3.34
1897	357	40,609	1916	---------	46,191	2.96
1898	573	60,955	1917	485	49,905	3.11
1899	537	59,019	1918	907	90,625	3.25
1900	2385	300,019	----------	----------	----------	----------

[a] Compiled from *GLO Annual Reports.*

the total income of the General Land Office to more than $2 million or double that of the Forest Service, whose obligations were rapidly increasing. It was becoming apparent that the cumbersome setup in the local land offices, where registers and receivers performed nearly identical functions, was wasteful and unnecessary. But these offices were valuable patronage which the politicians did not wish to lose and the two positions were to be retained for many years longer.

In 1916 the forestry obligations of the Interior Department were increased by the decision of Congress to place administrative responsibility in its hands for the forfeited Oregon and California Railroad lands and the Coos Bay Wagon Road lands. These lands, when granted to aid the construction of a north-south railroad from Portland to the California border, and of an Oregon wagon road in 1866 and 1869, carried with them a provision in the granting act providing that they should "be sold to actual settlers only, in quantities not greater than one quarter-section to one purchaser, and for a price not exceeding $2.50 an acre." [104] Neither company had managed its land as this "homestead" clause provided. After 813,000 acres which the Oregon and California, or its later owner, the Southern Pacific, had been sold the balance, some 2,600,000 acres, had been withdrawn from sale in 1903 to be maintained as a permanent timber reserve by the railroad. Three years later the Oregon Legislature in a memorial to Congress, protested against this action and the land monopoly it would assure. In 1908 the homestead clause was dusted off and provided the basis for a congressional resolution instructing the Attorney General to enforce compliance with the law and recover possession of the grant for the government.[105]

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[104] 14 Stat. 239 and 16 Stat. 47, 94.

[105] Jerry A. O'Callaghan, *The Disposition of the Public Domain in Oregon*, Committee Print, Sen. Committee on Interior and Insular Affairs, 86th Cong., 2d sess., 1960, *passim.*

After 8 years of complicated litigation between the Southern Pacific Railroad, the purchasers who had bought large tracts, the "settlers" who had purchased quarter-sections at no more than $2.50 an acre, and some 1,300 homesteaders who were claiming (with the aid of S. A. D. Puter, a notorious land dealer and author of a book on land frauds) the right to buy from the railroad quarter-sections of the land at $2.50 an acre, the Supreme Court reversed a lower court decree forfeiting the grant and left the final decision concerning the grant to Congress. Not only was the question of ownership vital to many but so also was the question of the method of sale of the land if it were to be returned to the government. Since some of the most heavily timbered lands in the country were involved, the question was, if they were forfeited should they be turned over to the Forest Service for management? It was scarcely conceivable they would be returned to the public domain and be subject to timber and stone and homestead entries as previously forfeited railroad land had been.

Congress on June 9, 1916, adopted a measure that one historian has called more a triumph of expediency than of statesmanship. Because of the questions left unsettled, it was to cause much difficulty for both Congress and the land administrative agencies. The act "revested" in the United States the remaining Oregon and California Railroad lands which had not been sold by July 1, 1913, and ordered their classification by the Secretary of the Interior "in cooperation with the Secretary of Agriculture, or otherwise. . . ." Of the three classes into which the lands were to be divided, the first was to include potential power sites, which were to be subject to withdrawal, the second was timbered lands having not less than 7,500 board feet to the acre, and the third was to include all other lands, presumably cutover areas or pasture lands, and called agricultural. The timber was to be sold separate from the land by the Secretary of the Interior, again in "cooperation with the Secretary of Agriculture, or otherwise. . . ." Fifty percent of the income from timber and land sales was to go to Oregon, of which one half was to be added to the school fund and the other half given the counties in which the land was located for schools, roads, highways, and bridges. Forty percent was to go into the Reclamation Fund established by the Newlands Act of 1902 which was somewhat of a victory of the reclamation states over Oregon, and the balance, 10 percent, was to go into the Federal Treasury.[106]

Congress had shown disdain for the Department of Agriculture and the Forest Service and favor to the Department of the Interior when it assigned responsibility for the O & C lands to Interior in the Act of 1916. In doing so it had agreed to divide the income from the lands more generously with local governments than the Forest Service was required to do. This two-to-one disparity in the method of division of the income of the two bureaus was further increased by an Act of August 28, 1937, in which Congress provided that 75 percent of the income from timber sales should go to the counties after the Federal government was reimbursed for some advances. Thereafter, nothing would persuade Oregon that Forest Service administration of the O & C lands could be superior to that of the Department of the Interior.

Revested O & C Land Management

The Act of 1937 was a landmark in the development of forestry in the Department of the Interior. Though Interior was given primary management responsibility for the O & C lands, it was authorized to arrange with Federal, state, or private forest own-

[106] 30 Stat., Part 1, pp. 221–23. David M. Ellis, "The Oregon and California Railroad Land Grant, 1866–1945," *Pacific Northwest Quarterly*, XXXIX (October 1948), 253 ff.

ers for coordination of fire protection and other aspects of control. It was also authorized to reclassify "agricultural," that is cut-over land, if it was found such land was more suitable for growing timber than for farming. Most important, the Secretary of the Interior was required to manage the lands on a sustained yield basis, providing for the cutting of no more timber than the lands were reproducing to assure a constant source of supply for dependent industries.[107]

In 1938, Secretary Ickes reported to the President that the Office of Director of Forests had been set up in the Department of the Interior "to promote a unified policy of forest conservation, forest planning and forestry management. . . ." This must have raised some eyebrows in the Forest Service, where Ickes was partly held responsible for the division of Federal forestry work by his fight to retain sole responsibility for the O & C lands, including 300,000 acres of alternate section lands within national forests, and by his effort to gain administrative control of the indemnity alternate section lands of the Oregon and California Railroad—amounting to 463,000 acres—which had never been patented and from which the Department of Agriculture had managed and sold timber since the administration of Theodore Roosevelt.[108]

Over the control of these indemnity lands within the national forests there was fought a bitter battle between respective advocates of the Departments of the Interior and of Agriculture. Interior was strongly supported by the people of Oregon who much preferred the 75 percent of the income from timber sales obtainable from that Department, which was inclined to favor early cutting, to the 25 percent share obtainable from the Forest Service, which was slower in authorizing sales and obtaining income. While he was battling for control over the indemnity lands, Secretary Ickes was also pressing forward his fight to have the national forests transferred to Interior where they might be integrated with the revested O & C lands and the remaining timberlands of the public domain,[109] as part of his objective of making Interior the Department of Conservation. In both moves Ickes was defeated; the indemnity lands remained under the jurisdiction of the Forest Service, and the Forest Service remained in Agriculture. On June 22, 1954, Congress extended the formula of the Act of 1937 to the indemnity lands, now definitely retained in Agriculture.[110] From the sale of timber on the revested O & C lands in 1966 in Oregon Interior received for distribution to the counties a larger sum than from the mineral, grazing, and timberland receipts in any other state, except for the income from drilling rights on the outer continental shelf.[111] Forestry is currently practiced in an extensive way in both the Departments of Agriculture and of the Interior.

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[107] 52 Stat. 874.

[108] Secretary of the Interior, *Annual Report, 1938*, p. 124.

[109] David M. Ellis has a fairly complete account of the Oregon and California lands from the grant of 1866 which I have followed closely.

As Jerry O'Callaghan has shown, the Oregon and California lands were among the most heavily timbered lands the United States owns, there being an estimated 50 billion feet on that portion of the lands administered by the Bureau of Land Management in 1960 and 10 billion on the portion administered by the Forest Service.

[110] 68 Stat., Part 1, p. 271. An official publication of the Department of the Interior, Bureau of Land Management, for 1966, contains an ownership map of the lands of western Oregon, showing "O & C Lands in Controversy" though in parenthesis appears "Under Dept. of Agr. by Act of 6-24-54, Public Law 426." *Public Land Statistics, 1966*, p. 123.

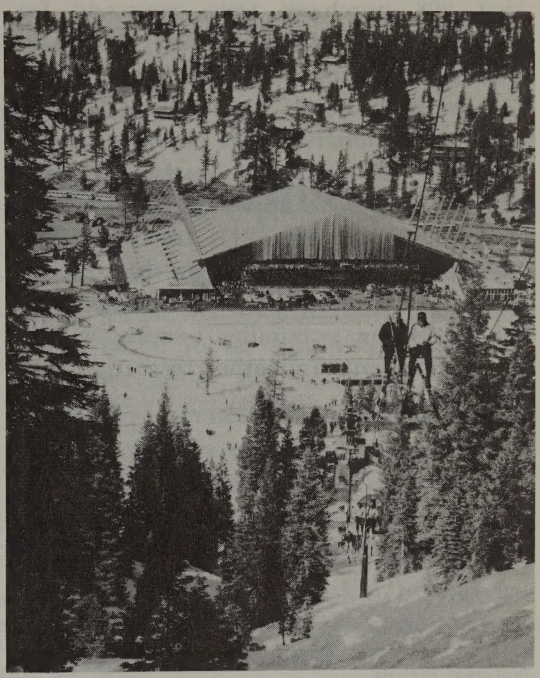
[111] *Public Land Statistics*, 1966, pp. 169–70. A useful study of "The O & C Lands," by Christian G. Basler of the Bureau of Land Management was kindly made available by Jerry O'Callaghan.

Congress, the two Hoover Commissions on the Reorganization of the Executive Branch of the Government, and numerous political scientists have been concerned that two Departments have large, somewhat duplicating and overlapping agencies managing forest lands and competing with each other for public attention. Various proposals have been suggested to bring them together, but perhaps the most promising development is the manner in which the Bureau of Land Management and the Forest Service have cooperated with each other in fire protection work, and in sharing with each other the benefits of their experience and findings.

The two forest management agencies have long recognized that public forests have other values than timber, watershed protection, and grazing. The multiple-purpose concept, that is the additional use of forests for recreation, for the support of wildlife for hunting and fishing, for the preservation of natural scenic values, and for the retention of wilderness areas in their natural state, receives increasing attention as the forests draw an ever-growing number of visitors. The Forest Service has long concerned itself with these objectives by setting aside areas where cutting will not be done, creating camping facilities and rendering many of the services of state and national parks to its visitors. In a number of instances lands it once managed have been added to Yellowstone, Sequoia, Olympic, the Great Smokies, and other national parks.

In 1965 Congress took another giant step to develop greater recreational use of the public lands in the national parks and forests and to stimulate similar state activities by enacting the Land and Water Conservation Fund Act. It provided that admission and other recreation fees received from the use of the parks and forests should feed into a fund, to which large

Land and Water Conservation Fund



Squaw Valley, Tahoe National Forest, California
U.S. Forest Service

advances were also made, 60 percent of which was allocated to the states and 40 percent to Federal agencies for acquisition of land and water areas for recreation. Major beneficiaries of the Federal portion of the Land and Water Conservation Fund were to be the national parks and forests. An interesting qualification was included that not more than 15 percent of the acreage to be added to the national forests should be west of the 100th meridian.

Additional funds for the two agencies to enable them to acquire some of the privately owned land within park and forest boundaries were highly welcome, for these holdings created many difficulties and made administration more costly. In the eastern forests no more than half the land was government owned. True, lands to be acquired were to be primarily for recrea-

tion. In 1965 the Forest Service reported that 208 purchases were approved for 29,056 acres of which 46 tracts were to be purchased through the Land and Water Conservation Fund. At the same time 12 individuals donated 1,354 acres to the forests. The next year 459 tracts containing 183,857 acres were approved for purchase. Among these were 211 tracts totaling 92,036 acres of outstanding values for intensive recreation development, hunting, fishing, hiking, swimming, boating, wilderness enjoyment, and other recreation pursuits.[112]

[112] *Forest Service Report, 1965*, p. 14 and *1966*, p. 22

The Park Service was also using its share of the Land and Water Conservation Fund to acquire more of the land within park and monument boundaries. There was little possibility that the Park Service would soon be able to close out private ownership in the seashore and mountain parks but the new Conservation Fund was making possible important gains.

A quick summary of the lands managed by the Forest Service and by the Bureau of Land Management, and the timber sales and grazing fees may be useful. Income from mineral leases and permits for 1966 was nearly 150 percent greater than the total of income from timber sales and grazing fees.

USFS and BLM Timber and Grazing Income, 1966

	Forest and Rangelands in Acres	Board Feet of Timber Cut	Income from Timber Sales and Grazing Fees
National Forests	186,497,010[a]	12,100,000,000	$173,900,000
Bureau of Land Management	175,818,952[b]	1,344,322,000	50,377,398[c]

[a] Includes 20,741,947 acres in national forests in Alaska that are not subject to selection by the state as part of its allotment of federally granted land.

[b] Exclusive of Alaska where the public lands produce little revenue to the government.

[c] The heavily forested O & C lands in Oregon produce a high return that by law goes mostly to the state and the counties in which the land is located.

CHAPTER XXI

Administration of Public Grazing Lands

The failure of Congress to adopt legislation to halt the destructive use of the public rangelands and to prevent the continued breakup of natural grazing areas by homesteading, which was taking the land with access to water and leaving useful grasslands without any water, brought about an increasingly critical situation by 1933. Overgrazing, destruction of the better grasses and survival of poisonous plants, erosion of steep hillsides and silting up of reservoirs, all emphasized the need for control. Furthermore, the catastrophic decline in livestock prices, which fell by 50 percent between 1931 and 1933, forced cattlemen to make greater use of the free range on the already depleted public lands.[1] Probably half the sheep and a sixth of the cattle of the 11 Intermountain and Pacific Coast States were partly or wholly dependent on grazing on the unappropriated and unreserved public lands.

Successful management of the ranges in the national forests and in the recently established Mizpah-Pumpkin Creek District of Montana caused some leading stockmen to see the advantage of a government leasing program, but they did not want the public range to be administered by the Forest Service or by the Department of Agriculture, whose officials had shown a marked tendency to charge the economic value of the forage cattle and sheep used. In its zeal to prevent overgrazing and to protect the range, the Forest Service had found it necessary in some instances to reduce the number of stock permitted on forest ranges. At the same time it was commonly conceded that the Forest Service had brought the forest ranges to a much better condition than the uncontrolled public

A Bureau of Land Management range manager examines a forage plant on public land used for grazing in New Mexico.

Bureau of Land Management



[1] The average value of cattle in the 11 states fell from $58.49 in 1929 to $40.75 in 1931, $20.11 in 1933, and $17.29 in 1934; the average value of sheep in these states fell from $11.12 in 1929 to $5.68 in 1931, $2.99 in 1933 and rose to $4.01 in 1934. Taken from Department of Agriculture, *Yearbooks*, 1929–34.

AREA OF UNAPPROPRIATED AND UNRESERVED PUBLIC LANDS AND LIVESTOCK USE
JUNE 30, 1932

State	*Acres*[a]	*Cattle*	*Sheep*
Arizona	13,581,760	894,000	1,003,000
California	15,712,567	1,887,000	3,038,000
Colorado	7,467,597	1,526,000	3,055,000
Idaho	10,865,472	687,000	2,115,000
Montana	6,238,429	1,378,000	4,049,000
Nevada	51,221,934	295,000	890,000
New Mexico	13,615,150	1,167,000	2,820,000
Oregon	12,920,334	835,000	2,545,000
Utah	25,197,820	480,000	2,360,000
Washington	708,363	646,000	720,000
Wyoming	14,728,953	906,000	3,893,000
Total	172,258,379[b]	10,701,000	26,488,000

[a] *GLO Annual Report, 1932*, p. 78; United States Department of Agriculture, *Yearbook of Agriculture*, 1933, pp. 590, 611. As of the time of the adoption of the Taylor Grazing Act the amount of unreserved and unappropriated land was 165,695,497 acres. Department of the Interior, *Annual Report, 1936*, p. 295.

[b] In addition there were 9,771,386 acres of public lands withdrawn for stock driveways. Omitted from the table are 1,059,857 acres of scattered lands in Arkansas, Florida, Minnesota, Nebraska, North and South Dakota.

rangelands, and its administrators had provided the very highest type of public service.[2]

Experiment in Cooperative Management

A modest experiment in the control of grazing on intermixed public and private lands had been undertaken on an area of 108,804 acres between two creeks (Mizpah and Pumpkin) in Montana. The Enlarged Homestead Act had drawn many settlers to this area who soon found the land of little or no use for growing grain. Most of the homesteads had been abandoned and had become open again to entry or had been taken over by banks or other credit agencies. Some were held by absentees. One writer has said there was nothing left but "dilapidated shacks, rusty windmills, patches of plowed ground, and scattered quarter-sections and half-sections of fenced in property. The fences gradually fell down, probably with some help from local stockmen, and the whole area became a grazing commons." Stockmen owned 8,081 acres, part of which they had been forced to buy from the homesteaders to assure themselves sufficient forage. Overgrazing had largely reduced what grass survived after the homesteaders' "improvements," and the land once covered with a heavy growth of palatable wheat grass capable of feeding 6,000 cattle bore only patches of the less palatable grasses that could provide for no more than 2,300 head of stock.[3]

Local livestock interests had worked out a proposal to provide management and range improvement for the Mizpah-Pumpkin Creek area. It included 22,432 acres that had been homesteaded, 27,534 acres of government land so poor in agricultural or grazing possibilities as never to have been

[2] In both Houses of Congress this emphasis upon the good management of the Forest Service ranges was reiterated a number of times by members who were not favorable to delegating to the Service responsibility for management of the public rangelands.

[3] Phillip O. Foss, *Politics and Grass. The Administration of Grazing on the Public Domain* (Seattle, 1960), pp. 48–49.



Western Rangelands

Bureau of Land Management

acquired in private ownership, 44,357 acres belonging to the Northern Pacific Railroad, and 6,400 acres of state land.

An Act of March 29, 1928, authorized the Secretary of the Interior to enter into cooperative agreements for a management program with the State of Montana and private owners within eight townships between the two creeks. All United States land within the district was to be withdrawn from entry except for minerals and was to be leased for not over 10 years to stockmen owning adjacent lands under rules the Secretary of the Interior was to prescribe. In the discussions leading to the adoption of the Act of 1928 Fiorello LaGuardia asked why it would not be better to pass a general law to provide for control of all the remaining public rangelands. Bills for this purpose and others to cede the lands to the states had been introduced fairly regularly in the twenties but differences of opinion had delayed action. Representative Scott Leavitt who had the Mizpah-Pumpkin Creek bill in charge in the House replied that the measure should be considered as an experiment which if successful might be developed on a much larger scale. He was also told by Charles E. Winter of Wyoming that he would fight to the finish any general law.[4] There was no real opposition to the proposal and it went through without a hitch, though one

[4] *Cong. Record*, 70th Cong., 1st sess., Jan. 26, 1928, pp. 2088–89.

or two members expressed unhappiness at the idea of ending homesteading in the tract, inhospitable as it was.

Management of the district was left largely in the hands of the users of the range. Rent for the Federal and state lands was set at slightly over 3 cents an acre but since the laws of Montana prohibited leasing for less than double this amount, Congress and the Interior Department were willing to help out the district by exchanging lands outside it for those of the state within. An Act of March 1, 1929, authorized these exchanges.[5] Forest Service personnel aided in getting plans under way and in determining the amount of stock the range could carry while being restored to a better condition. Artificial reservoirs were constructed and miles of fencing built to distribute and control grazing. The result was that the forage value of the land was increased 38 percent. The success of this first district was cited, as its projectors had anticipated, as an argument for establishing similar regional districts, and perhaps finally for a general law to apply to all the public ranges.[6]

Other grazing districts were subsequently established on the Mizpah-Pumpkin Creek model. The Secretary of the Interior reported in 1934 that 192,320 acres of public land had been included in a grazing district in Rosebud and Custer Counties, 175,000 acres in one in Garfield County, both districts in Montana, and 1,280,312 acres in a grazing district in Uintah County, Utah.[7] Under an Act of March 4, 1931, the Owens River-Mono Basin Grazing Reserve was created in California for the protection of the Los Angeles water supply. Included in the reserve were 865,000 acres, and 70 free use permits were granted.

[5] 45 Stat. 380, 1430.

[6] R. B. Tootell, "Grazing Districts. Nature and Possibilities in Range Land Utilization," *Montana Extension Bulletin*, No. 127 (December 1932), pp. 4–9; *Cong. Record*, 73d Cong., 2d sess., April 10, 1934, p. 6359; Roland R. Renne, *The Government and Administration of Montana* (New York, 1958), pp. 315–18.

[7] *Ibid.*, pp. 66–67.

Taylor Grazing Act

The combination of drought with poor forage and the low prices previously mentioned demoralized the livestock industry and brought about a change in its attitude toward Federal management of the public rangelands. Not that Federal management was the most desirable plan; few westerners thought so; but since transfer to the states was not acceptable there seemed no feasible alternative. In the 2d session of the 72d Congress Don M. Colton, leading Republican on the Public Lands Committee, with the assistance of John M. Evans, Democrat and Chairman of the Committee, succeeded in pushing through the House the Colton bill with little discussion and no division. It received no consideration in the Senate.[8] Colton was defeated in the sweep of 1932. Edward T. Taylor, who had earlier been the House sponsor of the 640-acre Stock Raising Homestead Act, now took the bill in his charge; the resulting measure, which was very similar to the Colton bill, was thereafter to be called the Taylor Act.[9]

[8] *Cong. Record*, 72d Cong., 2d sess., Feb. 7, 1933, p. 3569. The Colton bill and all the discussion are on pp. 3562–69.

[9] The major difference between the Colton and Taylor bills was that the former included a provision authorizing any of the 11 grazing states to exclude itself from Federal management if it so desired. There was no such provision in the Taylor bill. *Cong. Record*, 73d Cong., 2d sess., April 10, 1934, pp. 6362, 6365–66. Taylor did not spare Congress or himself for the error made either in adopting the Act of 1916 or in not repealing it long before 1934. In a speech lauding the Taylor Grazing Act on June 28, 1935, the Representative said, "Congress has never been willing to recognize this condition [unadaptability of the rangelands to farming] and encouraged ill-advised people to homestead in these arid areas with a resulting tragic loss of their time, labor, money, and appalling hardships and heartbreaking disappointments, and thousands of them being compelled to abandon their claims and the lands have gone to tax sale or returned to the public domain." *Cong. Record*, 74th Cong., 1st sess., June 28, 1935, p. 10394.

The bill had been given careful consideration by the Secretaries of Interior and Agriculture who agreed that the wisest plan was to have the lands over which administrative control was to be established retained under the jurisdiction of Interior. This was no supine surrender by Agriculture, for it had good reason to claim a share of responsibility for the public range but rather was based on the recognition that the measure would have more difficulty in getting through Congress if any considerable part of the lands were to be administered by the Forest Service.

Taylor's bill and the act as finally adopted included some obvious political compromises, some uncertainties, and some clear borrowing from the administrative practices developed by the Forest Service. "Pending its [the public land's] final disposal," the measure authorized the establishment of grazing districts to include up to 80 million acres of public lands that were chiefly valuable for grazing and raising forage crops. Part of the recommendation of the Garfield Committee of 1931 was included to permit the President to add to the national forests such lands as might best be administered by the Forest Service and to transfer from the Forest Service such land within the forests as could better be administered for grazing by the Secretary of the Interior. Decisions on such transfers, however, were to be made by the President, not by boards (two of whose five members should be appointed by the states concerned), as the Garfield Committee had proposed. The Secretary of the Interior, in whose hands responsibility for administering the control program rested, was authorized to initiate measures to protect, regulate the use of, and improve the lands within the districts. He was to issue permits for the use of the range, giving preference to stockmen, landowners, settlers, or owners of water rights, except those whose rights were gained in 1934. He could determine the fees and the number of livestock allowed within the districts and could reduce the number in the event of drought or epidemic disease. Settlers were to be permitted to pasture their domestic livestock free. Twenty-five percent of the income from fees was to be devoted to range improvements but only when appropriated by Congress, 50 percent was to be distributed to the states in which the lands were located for the counties, and the balance was to go to the Federal Treasury.[10]

Lands proposed for inclusion in districts were to be withdrawn from all forms of entry when public notice was given. When the lands within the grazing districts were classified, any that were found suitable and more valuable for raising agricultural crops than native grasses were to be open to homesteading in 320-acre tracts. Isolated or disconnected tracts up to 760 acres outside the districts might be sold at their appraised value, and small tracts not over 160 acres that were mountainous or rough could be sold to adjoining property owners. Finally, isolated or disconnected tracts up to 640 acres that were not included within the districts could be leased to contiguous owners.[11]

In the discussion in the House on the Taylor bill the cost of management and the fee question received the most attention. Representative Harry L. Englebright of California who was bitterly opposed to the measure, raised the cry of bureaucracy, objected to ending homesteading, and claimed the act would perpetuate Federal ownership of the lands and leave 11 states half Federal and half state. Englebright asked why the act did not provide for the management of the lands by the Forest Service which had already acquired much experience in administering rangelands and

[10] This was in contrast to the 25 percent the states received of the receipts from grazing and sale of stumpage within the national forests.

[11] 48 Stat. 1269 ff.

would surely be able to manage them for less than any new agency would have to charge. Whether his amendment was a shrewd effort to defeat the measure or was an expression of respect for the Forest Service is not clear. It was brought out in the hearings that the Forest Service had estimated that the cost of managing an additional 80 million to 160 million acres would be $1,500,000 to $2 million. On the other hand, Harold Ickes, in his desire to retain control of the lands in Interior, declared that his Department could manage them for a mere $150,000. Ickes' estimate of cost was ridiculed by Vincent Carter of Wyoming who said that nobody in the House believed he could handle the problem for that amount. Richard M. Kleberg, Texan owner of the giant King Ranch, moved that fees for pasturing cattle in the districts to be created should be not less than 80 percent of the average commercial fees in adjacent areas, or in areas of the same general character. The Kleberg amendment failed for, as was said, the amendment would make it impossible for the management and leasing plan to succeed. Kleberg raised the question that had long bothered the Forest Service: should it charge less than the going value of the pasturage, as its permittees wanted, and thereby give a minority of the stockmen an economic advantage over the much larger group whose members paid, either in taxes and other costs on their own land or on rented land, the commercial value of the forage, or should it charge a rate equivalent to the actual value of the service? The Forest Service had moved fairly steadily toward the latter objective but had suffered politically as a result.[12]

Before the enactment of the Taylor bill the Solicitor of the Department of the Interior said that the Withdrawal Act of June 26, 1910, gave the Secretary sufficient legal authority to create grazing districts by administrative order and therefore no special legislation was necessary. Mindful of the unfavorable reaction land withdrawals recommended by Gifford Pinchot and ordered by Theodore Roosevelt had received, the advocates of the bill preferred to get congressional sanction, for, as Vincent Carter of Wyoming said, the bill was loaded with dynamite. It was federalism in the extreme, it would give the Secretary of the Interior dictatorial power, and would surely lead to effective reprisals in much the way that restrictive and at times harmful legislation had been directed at the Forest Service in reprisal for its restrictions on grazing. Many western Congressmen, perhaps most, agreed in part but were convinced that action to conserve the range and establish order in its use was essential and the Taylor bill offered the only route to these ends.[13] The bill passed the House, 265-92. Fifteen votes from the states to be most affected by the measure were cast against the bill, eight Republican and seven Democratic. The Senate passed the measure without useful discussion and without a division but it insisted on limiting the area that might be included in grazing districts to 80 million acres.[14]

Homesteading on public lands under the Stock Raising Act, the original Act of 1862 or the Enlarged Homestead Act of 1909 did not end with the adoption of the Taylor Act. All existing rights that may have been established prior to its enactment were saved. Furthermore, the act did not provide for suspension of entries under any of the acts until the notice of a hearing on proposed boundaries of districts to be created had been posted. On November 26, 1934, all remaining unreserved lands in North and South Dakota and 10 Intermountain and West Coast States exclusive

[12] *Cong. Record*, 73d Cong., 2d sess., April 10, 1934, pp. 6362, 6365, 6368, 6348.

[13] *Cong. Record*, 73d Cong., 2d sess., June 12, 1934, pp. 11142–43.

[14] *Cong. Record*, 73d Cong., 2d sess., April 11, 1934, p. 6414, and June 12, 1934, p. 11162.

ORIGINAL ENTRIES ACCEPTED BY THE UNITED STATES, 1933–1955

Year	*Stock Raising Entries*		*All Homestead Entries*	
	Number	*Acres*	*Number*	*Acres*
1933	4,884	2,358,231	7,769	2,714,029
1934	5,136	2,567,888	7,741	2,862,142
1935	2,133	1,051,870	3,458	1,193,321
1936	812	326,331	1,313	383,656
1937	174	74,910	609	121,777
1938	106	43,078	464	81,910
1939	49	24,963	410	70,925
1940	5	3,639	383	50,141
1941	17	7,772	425	53,440
1942	14	8,451	285	37,435
1943	14	6,945	213	29,299
1944	5	2,320	158	19,868
1945			185	22,694
1946	2	1,277	144	18,260
1947	1	635	475	55,092
1948	1	640	689	85,734
1949	1	640	684	82,712
1950			571	79,840
1951	2	1,233	415	56,209
1952	1	640	460	59,070
1953			483	61,536
1954			474	60,127
1955	1	642	482	60,148

Data provided by the Bureau of Land Management, courtesy of Karl Landstrom.

of Washington, were withdrawn from all forms of entry and on February 5, 1935, the public lands in 12 additional states were withdrawn, which for the moment halted entries except those where rights previously existed. Yet where existing rights had been reserved homesteading continued, and to a considerable extent.

After 1955 no further stock raising homesteads were filed but between 1956 and 1966 a total of 6,159 original homestead entries were filed under other acts for a total acreage of 776,216. Eighty-nine percent of these original entries were filed in Alaska and for the later years between 95 and 98 percent were Alaskan. Exchanges, sales, and leases of small tracts authorized under the Taylor Act were also being made.

Taylor Act into Operation

The need for prompt action to protect the range was great and officials of the Department of the Interior did not intend to delay in putting the Taylor Act into operation. A series of preliminary conferences and public hearings was held, a small staff was recruited for the Division of Grazing, a budget of $250,000 (not the $150,000 that the Secretary had said would be sufficient) was presented to the Congress, the President was persuaded to issue orders withdrawing for classification all public lands except those in Alaska, and plans were drafted for the establishment of 50 grazing districts containing some 142 million acres of the public lands.

For the moment only 32 districts in 10 states could be placed in operation because

of the provision in the act which allowed states to choose not to have the act apply to them. It quickly became apparent to the planners that the limitation of 80 million acres which the Senate had insisted upon was unwise for it would leave outside the districts potentially good grazing land, would force the division of some ranges and would result in further overgrazing and destruction of those areas remaining uncontrolled. Consequently, in 1935 a measure was introduced to increase the maximum to 142 million acres. This gave Congressman Robert F. Rich, one of the ablest opponents of the new agricultural program and one who disliked the original Taylor Act, an opportunity to belabor it again by maintaining that when it was under consideration advocates of control by the Federal government had insisted that only one agency would be needed to administer the grazing on all the public lands, including the forest lands. He moved an amendment to have responsibility for the grazing administration on the public lands consolidated with that of national forests in the Department of Agriculture, but it was ruled out of order.

One of the telling arguments in support of enlarging the area to be included in the grazing districts was that a ruling had been handed down which banned the use of the Civilian Conservation Crops on public lands not intended for inclusion in the districts. Their work in building reservoirs, fences, and trails, in erosion control, and in eliminating rodents and poisonous plants was most valuable and was needed as much on the lands outside the districts as within. But it had been held "unsound, economically, to include such work . . . [outside the districts] in the absence of a satisfactory future control of the lands benefitted. . . ."[15] The amending bill passed by both Houses reserved certain powers to the states which made it unsatisfactory to the President, who declined to sign it. In the following session of Congress a satisfactory measure went through virtually without discussion raising the maximum amount of land to be included in the grazing districts to 142 million acres and thereby enlarging the area in which the CCC could work.[16]

Officials of the Department of the Interior, in initiating control over the public lands, were most anxious to win the confidence of the stockmen and to gain their cooperation in improving the range, undoubtedly having in mind the many criticisms that both cattlemen and sheepmen had directed at the practices of the Forest Service. From the outset they were determined not to base fees for the use of public ranges within the districts on their economic value. Nor was there any intention of developing a bureaucratic organization centered in Washington; instead administration was to be decentralized, advisory boards with considerable authority were to be elected by permittees, and the Civil Service Commission in preparing criteria for positions in the Division of Grazing was to give consideration to practical range experience in the public land states. The Division of Grazing was to stand out among new Federal agencies in that its appointees were not drawn from the major universities and law schools. Its chief officers were selected from men who had been residents of public land states at least a year before receiving their appointments.

To direct the new agency, Farrington R. Carpenter, a Colorado livestockman who specialized in purebred Herefords and was a Harvard graduate, was selected. Carpenter was not politically oriented, had the usual westerners' distrust of bureaucracy, and was convinced that the range should be administered by a system of local self-rule. A series of western regional and state meetings was held to establish good rela-

[15] *Cong. Record*, 74th Cong., 1st sess., May 23, 1935, pp. 8095, 8097, 8109; Foss, *op. cit.*, p. 57.

[16] 49 Stat., Part 1, p. 1976.

tions between the governing authorities and those whose grazing practices were to be regulated. In all the discussions stress was laid on the part the advisory boards, elected by the users of the range, were to have in drafting the rules and regulations, and every effort was made to cooperate with the stockmen, win their confidence and support, and convince them that the controls were theirs and solely for their benefit, without minimizing conservation.[17]

The selection of a local stockman as chief administrator, the establishment of the local advisory boards, which were given legal status in an Act of 1939, the establishment of national and state advisory boards, the modest fees that were charged (5¢ per month for cattle, 1¢ for sheep, modest when compared with the 16¢ and 4¢ charged in the national forests, and the even higher commercial rates), and the extreme care in determining preferential grazing privileges (if the ranges were to be improved some former users would have to be cut back) all seemed likely to make the new conservation agency acceptable, if not actually popular. Indeed in 1939, Congressman Edward Taylor, in a speech applauding the Division of Grazing and the Department of the Interior, especially the Secretary, could speak of the "amazing change" that had come to the public rangelands and the "renewed confidence to the entire social and economic structure of the West" that had resulted from the adoption of the Grazing Act. The administration had fostered the principle of home rule and local autonomy and had developed policies that reflected a "harmony of purpose." Taylor cited some of the concrete results that came from it and from the work of the Civilian Conservation Corps—the building of flood control structures to impound waters and fencing to break up the tendency of stock to concentrate around a few waterholes, which had meant failure to utilize valuable forage where water was lacking. More specifically he enumerated the building of 358 spring developments, 143 wells and storage facilities, 780 earth reservoirs, 1,950 miles of range fences, 225 corrals, 1,750 miles of stock trails, 4,950 miles of truck trails, 185 bridges, 245 cattle guards, the treatment of 7,300,000 acres for rodent control and 330,000 for the eradication of poisonous plants. He rejoiced in the elimination of the tramp sheep outfits for which there seemed to be little favor.

ANIMAL USERS IN THE GRAZING DISTRICTS, 1938[a]

Districts	50	Goats	96,455
Licensees	19,342	Deer	302,070
Cattle	1,605,566	Antelope	85,000
Horses	108,925	Elk	6,970
Sheep	9,221,696		

[a] *Cong. Record, App.*, 76th Cong., 1st sess., June 28, 1939, pp. 2930–34.

Transfer of Forest Service Resisted

Despite Congressman Taylor's bland words all was not harmony. Warfare had been going on since 1935 between Harold Ickes and the Department of Agriculture over the final lodgment of the Forest Service. Ickes was an extraordinarily able administrative officer—some would say the ablest of the new breed that came into office in 1933—an old-line Bull Moose Progressive of 1912 and an ardent conservationist. Almost from his first day as Secretary of the Interior, he began to dream of recovering administrative control of the na-

[17] Robert R. McCormick, "Capital Cowboy," *Collier's*, 101 ff. (March 5, 1938), 38 ff. The *Diary* of Harold Ickes, the reports of the Secretary of the Interior and the Director of Grazing, and the tesitmony at various hearings of Senate and House committees on measures affecting the grazing program all justify the generalization concerning efforts to appease the livestockmen through continued emphasis upon local self-rule.

tional forests lost to Agriculture in 1905.[18] One of his first steps to gain that end was a proposal he advanced to have his Department renamed the Department of Conservation. From 1935 to the approach of World War II he strove mightily to persuade Congress to provide for this change and to convince the President that the Forest Service should be transferred to Interior.

The passage of the Taylor Grazing Act seemed likely to further Ickes' plan of having all agencies dealing with the administration of the public lands placed in Interior. Ickes called the act, with some justification, the "Magna Carta" of the conservation movement, making it rank with the Act of 1891 authorizing the withdrawal of public lands for watershed protection and forest conservation, the Weeks Forest Purchase Act of 1911 authorizing the purchase of lands to be placed in national forests for watershed protection, and the Act of 1916 for the creation of the National Park Service. The Taylor Act made the Department of the Interior responsible for the management, development, preservation, and conservation of some 142 million acres of grazing lands, in addition to its responsibility for the administration of the 50 million acres of Indian lands and the public lands in Alaska. True, conservation of land and its resources was a new concept for Interior. In the past the Department's major responsibility had been conveying the public domain and the country's natural resources into private ownership by administering acts providing for the sale or grants of public lands to individuals, railroads, and states.

Another development that added much strength to the plan to concentrate all government land-administering agencies in Interior was the Report of the President's Committee on Administrative Management, which President Roosevelt appointed in 1936. The committee was to make suggestions for bringing order out of the "antiquated machinery" of government that had grown up in the past and been vastly expanded in 1933-35 and for providing "more effective administration and . . . adequate control by the Congress." The men selected for the task—Louis Brownlow, head of the Public Administration Clearing House, Charles E. Merriam, professor of political science in the University of Chicago, and Luther Gulick, director of the Institute of Public Administration—constituted the most distinguished panel of experts that could be assembled in the country. The committee's great prestige and the skill with which it went about its task, were certain to give its recommendations great weight with the President, Congress, and the public.

On January 12, 1937, the Brownlow committee report was sent to Congress.[19] In its Plan of Reorganization the committee recommended the consolidation of the more than 100 separate administrative agencies into 12 departments, two more than existed at the time, the Department of Social Welfare, virtually the Department of Health, Education, and Welfare of a later time, and the Department of Public

[18] *The Secret Diary of Harold L. Ickes. The First Thousand Days, 1933–1936* (New York, 1953), p. 21.

As part of his efforts to rehabilitate the reputation of his Department which had not recovered from the scandal involved in the leasing of Teapot Dome by his predecessor, Albert W. Fall, Ickes had published in the *Saturday Evening Post* of May 25, 1940, an article entitled "Not Guilty: Richard A. Ballinger, An American Dreyfus," wherein he cast aside the interpretation of the Ballinger–Pinchot controversy that writers had generally followed and attempted to show on the basis of rereading the evidence that Ballinger had been badly maligned, not only by Pinchot, Louis Brandeis, and others as of 1910 but by most subsequent writers who had not, he thought, carefully investigated the facts.

[19] *Report of the President's Committee on Administrative Management* (Washington, 1937), pp. 33–35; Louis Brownlow, *A Passion for Anonymity. The Autobiography of Louis Brownlow*, 2d half (Chicago, 1958) pp. 313 ff., esp. 373, 380.

Works, which might have taken the Bureau of Roads from Agriculture and the heavy construction work of the Reclamation Service from Interior. Interior, it was proposed, should become the Department of Conservation, "to administer the public lands, parks, territories, and reservations, and enforce the conservation laws with regard to public lands and mineral and water resources, except as other wise assigned." Under proposals for Agriculture nothing was said about the national forests. Ickes had thus gained a boost in the recommended change of name of his Department; though forests were not specifically mentioned Secretary Wallace could derive little comfort from the report.

Brownlow, Merriam, and Gulick may have been thoroughly logical in advocating consolidation of all land management and conservation agencies in a transformed Department of Conservation but Roosevelt was well aware of how unpopular any action to transfer the forests to Interior would be, no matter what name the Department received. Support for the change of name withered away under the leadership of the National Grange, the Society of American Foresters, Ovid Butler, the able editor of *American Forests,* the schools of forestry, especially that of Yale led by H. H. Chapman, numerous groups interested in the conservation of wildlife, and Gifford Pinchot, all of whom joined in an active and well-managed campaign.[20] As late as 1941 Ickes was still trying to get the President to order the transfer or to ask Congress to do so.[21]

Criticism Hampers Grazing Service

Before the tempest over the proposed removal of the Forest Service from Agriculture to Interior had finally subsided—the issue was to crop up many times later[22]—another controversy broke out that was to do great harm to the Grazing Service and to the public rangelands. This had to do with the allocation of grazing rights within the districts. Section 3 of the Taylor Act provided for the allocation of such rights as follows:

> Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of land, water or water rights, owned, occupied, or leased by them. . . .

It was this provision that drove out of business the nomadic sheepmen who owned or leased little land but had grazed their flocks over the public lands and stripped it of its forage, thereby denying it to local ranchers who had a heavy taxable investment. Owners of a headquarters ranch, an important source of water, or other base property essential for the livestock industry who had used such property as a base while grazing their stock on the public lands were assigned high priority in the use of the rangelands in the districts commensurate with their base. This commensur-

[20] *American Forests*, 41 (March, August, 1935), 140, 386; 42 (January 1936), 41; 43 (March, June, August, October, November, 1937), 109, 282, 293, 397, 494, 519, 524, 545. Editors hostile to placing the Forest Service in Interior from papers in Bismarck, N.D.; Boise, Idaho; San Francisco, Portland, and Oakland are excerpted in *American Forests*, 43:545.

Richard Polenberg has an able account of the opposition to the transfer of the forests to Interior in "Conservation and Reorganization: The Forest Service Lobby, 1937–1938," *Agricultural History*, XXXIX (October 1965), 230–39.

[21] *Diary of Harold L. Ickes* has many allusions to discussions with the President concerning the proposed transfer of the Forest Service and the change of name of the Department. The question of the position of the Forest Service in the Federal government is also discussed in Chap. XX, "Administration of the Public Forest Lands."

[22] 53 Stat., Part 2, pp. 1423–36. Despite his major defeat Ickes did secure the transfer of the Bureau of Biological Survey from Agriculture, the Bureau of Fisheries from Commerce, the Bureau of Insular Affairs from War, and a number of other minor offices.

ability gave added value to the base of land or water or both and aided in building up a tax base. This, said one beneficiary of the Taylor Act, was one of the purposes of the act.[23] Supplementing this concept of commensurability was the policy of granting priority to owners of forage land which was used in livestock operations in connection with the public lands for any 3 years or any 2 consecutive years between 1929 and 1934. Commensurability and priority were the bases for the allocation of permits and when reductions in the number of livestock had to be made because the districts were overgrazed, such reductions again were based on these concepts.[24] Unfortunately, the base period on which priority calculations rested were years of great distress in the livestock industry, particularly in Nevada, and a number of ranches had fallen into bankruptcy and liquidation, the stock and various rights were sold and priority rights were thus lost. Later, when the grazing authorities and the advisory boards tried to give somewhat greater emphasis to the rights of substantial property owners who had gained priority between 1929 and 1934, it was found necessary to reduce the rights of those lacking the same commensurability or priority.

R. H. Rutledge, formerly of the Forest Service, who replaced Farrington Carpenter as Director of the Grazing Service in 1939, later summarized his conclusions regarding the progress made in administering the rangelands. The set of regulations or code which had been carefully prepared with the aid of the advisory boards was in great detail, difficult to interpret, and confusing to stockmen and officials. The personnel were largely drawn from stockmen's ranks, including some who had experience with the Forest Service or with other agencies of the Interior Department. The advisory boards, Rutledge thought, provided an excellent system but he conceded that errors would be made—and presumably he meant they had made mistakes.[25]

Senator Pat McCarran of Nevada felt that the levy of 5 cents per head per month for livestock grazing in the districts was not justified, since he had no evidence that the forage had improved since control had been initiated. He listened to the tales of alleged favoritism in the assignment of grazing rights, and to the complaints of the American National Livestock Association, whose headquarters were in Wyoming, and he became very critical of the Grazing Service authorities. He introduced a resolution into the Senate on March 9, 1940, embodying the charges made by the Livestock Association and calling for their investigation as follows:[26]

> To what extent have the emergency powers conferred upon agencies having jurisdiction over public lands been abused?
>
> To what extent have purchases by the Resettlement Administration and the Farm Security Administration as part of the submarginal land retirement program been conducted without regard to the adverse effect upon the state and local taxing units or the proper balance of livestock units?
>
> To what extent have the Federal land administering agencies been enlarged and extended and bureaus within bureaus been created?
>
> To what extent have these bureaus interfered with established and legally recognized water rights?
>
> To what extent have public lands been

[23] *Hearings Before a Subcommittee of the Committee on Public Lands and Surveys, United States Senate, on Administration and Use of Public Lands*, 77th Cong., 1st sess., 1941, Part 1, p. 103.

[24] Secretary of the Interior, *Annual Report, 1938*, p. 111.

[25] *Hearings . . . on Administration and Use of Public Lands*, 77th Cong., 1st sess., 1941, Part 3, p. 898.

[26] *Cong. Record*, 76th Cong., 2d sess., p. 2593. *Hearings . . . on Administration and Use of Public Lands*, 77th Cong., 1st sess., 1941, Part 1, p. 297.

classified as marginal without due regard to previous leasing arrangements?

To what extent have administrative rules and regulations under the Taylor Act resulted in extending the authority of the administrator and evading limitations and restrictions in that act?

To what extent has administrative authority been abused to circumvent the jurisdiction of the courts or to coerce the courts?

To what extent have representatives of the Department of the Interior through coercive tactics attempted to reverse views expressed in meetings of the grazing districts?

To what extent have long-established principles relating to the supervision of the livestock industry as applied by government bureaus been disregarded?

When the resolution was reported back from the Senate Committee on Public Lands and Surveys, couched in more appropriate language, it called for a "full and complete investigation of the purchase, withdrawal, and allocation of lands and the administration and use thereof" by any agency of the Federal government.[27]

A year later, after considerable preliminary work, the subcommittee of the Committee on Public Lands and Surveys began its hearings on June 24, 1941, in Ely, Nevada, under Senator McCarran. Over the next 4½ years it toured the range states, holding meetings in 18 communities for a total of 62 days of which 14 were in Nevada (including three different appearances in Ely, two in Reno, the home of the chairman), eight in Wyoming, nine in Arizona, seven in Utah, five in New Mexico, and four each in Oregon and Colorado. The hearings cover 6,053 pages of testimony and documents. Members of the subcommittee were drawn entirely from the western states except for one Senator from Florida who did not take his obligation seriously. All Senators and Representatives participating were unanimous that state ownership and utilization of the public lands were preferable to Federal control and that private ownership should be the objective for the rangelands. Their questions indicated a deep suspicion of the activities of the officials of the Grazing Service which they saw as a struggle for power, unfairness in deciding between contestants, manipulation of the advisory boards, and erection of a political following. Niggling complaints of officiousness, arbitrary action, unfairness to sheepmen and to those who had no important base property or who had not been in the stock business for the base years 1929-34 were welcomed by the subcommittee, but members of the advisory boards who were generally friendly to the administration were on occasion given a hard time.

Much attention was given to the expansion of the number of employees of the Grazing Service from 36 in 1936 to 248 in 1942, and the increase in appropriations from $250,000 to $800,000. Officials of the Service frequently managed to get into the record their inability to handle many of the problems that were constantly coming up because of insufficient staff, but to no good effect.

Over and over again persons testifying compared the experience of the Grazing Service to the early history of the Forest Service. There had been many complaints about the fees, the reduction of animals allowed within the forests, and the arbitrary actions of officials of that Service but these complaints had been gradually resolved and now the Forest Service was given a clean bill by most commentators. The Grazing Service would go through the same experience, it was thought.

Meantime, there seems to have developed between the chairman of the subcommittee which was making the investigation of the

[27] *Cong. Record*, 76th Cong., 3d sess., May 24, 1940, p. 6797.

Grazing Service and the Secretary of the Interior a vendetta that is reflected in two reports of the subcommittee and the apparent refusal of the Secretary to communicate with the chairman. The subcommittee report of 1944, which is listed as a "Second Partial Report," quoted from the testimony of Secretary Ickes before the Senate Committee on Public Lands in 1934 in which he was pleading for the adoption of the Taylor bill. Ickes, as we have seen, had tried to convince the Senators that no new agency would be necessary and that the General Land Office could manage the grazing lands for no more than $150,000. This was now thrown back at him to show either how far wrong he had been or that he had failed to live up to his promises. The report elaborated on the grievances of the stockmen in an effort to discredit the Grazing Service. The committee disregarded the testimony which showed that many grievances resulted from inadequate staff. At great length the report detailed the growth of personnel in various ranks, the rapid increase in the number of higher officials and in their salaries, and criticized the Service's "attempts to nullify or modify the acreage limitation," first, by inducing Congress to change the maximum from 80 million to 142 million acres; second, by procuring the issuance of Executive orders withdrawing all public lands from entry; third, by having 16,258,132 acres of land previously withdrawn for power sites, proposed monuments and parks, stock driveways, reclamation, or soil conservation included within the districts. This, it was made to appear, was evidence of bureaucrats grasping for power rather than of officials anxiously trying to conserve and improve the usefulness of the range. It was not brought out that the salaries of the high officials of the Reclamation Service, the Geological Survey, the Forest Service, and the Fish and Wild Life Service, the National Park Service, and the Bureau of Mines were from 12 to 30 percent greater than salaries of like officials of the Grazing Service. A sum 20 times the original estimate for managing the grazing lands was being spent. In the hearings there had been some indication that other elements than livestock interests, notably the wildlife groups and the big game hunters, had some interest in the public lands, but the Partial Report was solely concerned with the livestock interests. The major question to which attention ought to have been paid, the effect of 9 or 10 years of controlled management on the rangelands, was ignored in the report.[28]

Secretary Ickes was not one to try to sidestep a quarrel. His reply to the subcommittee's charges and innuendos was clear and reasonably effective. The estimate of $150,000 was made when only 50 million acres were to be given management status. The district advisory boards were later added to the plan, calling for $100,000. Above all, once the Department began to apply effective management, it was seen that the size and cost of an adequate staff were much greater than anticipated. The 5-cent fee was only intended to be temporary. Ickes reminded Congress that in 1933 it was estimated that the value of the forage on the public range was $10 million and might be substantially increased with controlled management. A reasonable fee, he maintained, was one that "represents the fair value of the forage obtained by the user." Finally, the Secretary pointed to the preamble of the Taylor Act which placed emphasis upon stopping injury to the public lands by "preventing overgrazing and soil deterioration, to provide for their orderly use, improvement and development, to stabilize the livestock industry dependent upon the public range . . ." These

[28] *Senate Reports*, 78th Cong., 2d sess., No. 404, Part 2, (Serial No. 10,841)

purposes he felt the subcommittee had quite forgotten.[29]

In a longer and more detailed report of the subcommittee investigating the administration of the Grazing Service of January 31, 1947 (its authority had been twice extended) the officials of the Grazing Service were subjected to a merciless attack, as "self-seeking, opportunist administrators," who were "dominated by an obsession to increase, at all costs, the areas of land under their administration; and never, no matter what the cost, to permit any diminution of the administered areas . . ." They were accused of having "virtually nullified those sections of the Taylor Grazing Act intended to permit homesteading and the sale of isolated tracts," of discouraging appeals from decisions of administrative officers, of having misused funds, and worst of all of trying to raise the fees despite the concerted opposition of the livestockmen and their associations and lobbyists. Rarely has a government agency been so excoriated. Some members of Congress who had participated in the attacks of the subcommittee on the Grazing Service were themselves personally interested in the livestock industry and they were particularly distressed at the proposed increase in fees.[30]

Before the final report of the subcommittee was prepared a difference of opinion between the House and the Senate emerged that was to cause the funds available to the Grazing Service to be drastically reduced, necessitating a contraction of its services. Jed Johnson, Representative from Oklahoma, speaking for the House Committee on Appropriations for the Interior Department for 1945, recommended a reduction for the Grazing Service from $1,359,500, the Budget estimate, to $425,000. Johnson offered a little homily about the necessity for reducing government expenditures, stated that he was "shocked" to learn that the already beleaguered agency, which was under attack in the Senate for contemplating raising its fees, "had no intention" of raising them. He rightly declared that its charge of 5 cents per month for cattle "in most areas, was out of line with fees charged by other persons or agencies leasing such lands" and recommended "an adjustment of grazing fees, to the end that the service would become self-supporting, as was originally intended."[31] Senator McCarran got wind of this contretemps and quickly sought to protect his position, that there was no necessity for raising the grazing fee, by saying that the Appropriations Committee "had been incorrectly and inadequately informed with respect to the essential facts and interests involved." He repeated that the members of the House committee "have been greatly misinformed by grossly misleading statements and data presented to them by the Grazing Service." The true facts were set out, he declared, in his report. He then went on to amplify his charge of "ambitious and unscrupulous dealings" by the Grazing Service with both Congress and the livestock industry. He denied that the stockmen asked any favors, averred that they were quite willing to pay a reasonable price for the value of the forage but feared the alarming expansion of the Grazing Service and "its insatiable demands for ever larger appropriations, especially if they were to be charged back against the users of the grazing districts." He believed the livestock industry would be quite willing to pay larger fees if an unbiased study justified them, though there was nothing in the hearings that indicated such willingness. Actually Senator McCarran, the subcommittee of the Senate Committee on Public Lands and Surveys, and

[29] *Cong. Record*, 79th Cong., 1st sess., March 30, 1945, pp. 2970–73. Senator McCarran replied but merely reiterated the charges he had included in his Second Partial Report, pp. 2973–75.

[30] *Senate Reports*, 80th Cong., 1st sess., No. 10. (Serial No. 11,114)

[31] *House Reports*, 79th Cong., 2d sess., May 7, 1946, No. 1984, p. 7.(Serial No. 11.024)

the livestock industry were in agreement that fees should be kept to the minimum and should be unrelated to the actual value of the service the districts offered.[32]

Under Jed Johnson's prodding in behalf of economy and owing to the feeling that the Grazing Service should be virtually self-supporting, the appropriation for its maintenance in 1947 was cut to $212,500 but not before other staunch advocates of economy from the range states woke up to the realization that the deep cut would virtually wreck the program that had been developing during the past decade. Then, though most of the speakers were hostile to Harold Ickes, who by this time had been replaced as Secretary of the Interior by Julius Krug, they deplored the reduction of appropriations. Speaker after speaker from Utah, Arizona, Colorado, Wyoming, Idaho, Montana, Washington, Nevada, and New Mexico took a strong stand against the cut, upholding the Grazing Service and showing marked confidence in its management. This must have been balm for officers who had been so generally condemned for mismanagement, inefficiency, and power grabbing. However, a combination of eastern and middle western support for the reduced appropriation proved irresistible.[33]

In the Senate, where the range states had greater proportionate strength, members were not willing to cut as deeply as was the majority in the House, though Senator McCarran was anxious to reduce the staff of the Grazing Service to 100. The appropriation was increased to $802,500, though this was still far below the Budget estimate. Senator McCarran was sufficiently troubled by the size of the cut to fear that the Grazing Service would take reprisals against him and Nevada by dismissing all its staff in that state. To prevent such action, he urged the Senate unsuccessfully to adopt an amendment that would prevent the dismissal of members with Civil Service rating.[34]

The drop in appropriations, which forced the dismissal of nearly two-thirds of the staff of the Grazing Service, and congressional harassment of its officials produced a rapid overturn of its employees so that by 1948 there was an almost completely new staff at the top. Grazing supervision and trespass control were "limited"; only through the aid of funds provided by the advisory boards from fees was it possible to maintain the essential services. Work on the improvement of the range had to be halted, though an effort was made to maintain previously installed improvements. As a result of a staff inadequate to enforce the regulations some stockmen "willfully grazed excess numbers" of cattle or sheep, knowing that they were safe in so doing. A year later further increases in trespasses were reported with only the most flagrant cases receiving attention. Secretary of the Interior Krug exhorted the President and Congress in his annual report for 1947 to realize that effective conservation measures required the expenditure of public funds, that at least 115 million acres of the public rangelands needed remedial attention, and that 46 million acres were in critical condition because of overgrazing and erosion.[35]

Elimination of Federal Ownership Sought

Having seriously weakened the Grazing Service both as a political instrument and as an effective management agency (thereby freeing the livestock interests of higher fees or reduction in the number of animal units allowed in the districts) and cast reflection on the advisory boards for their loyalty to

[32] *Cong. Record*, 79th Cong., 2d sess., May 9, 1946, pp. 4690–94.

[33] *Cong. Record*, 79th Cong., 2d sess., May 10, 1946, pp. 4833–39. Rooney of New York, and Jensen of Iowa argued for the defense of the deep cut.

[34] *Cong. Record*, 79th Cong., 2d sess., June 19, 1946, pp. 7, 151.

[35] Secretary of the Interior, *Annual Report, 1947*, pp. 3, 7, 283–87. *Annual Report, 1948*, p. 269.

the administrative officers, the livestock associations next set as their goal the elimination of Federal ownership and management of the rangelands.[36] This could be accomplished by reviving the policy of unlimited sales of public land or by permitting sales of tracts to adjacent owners in a much larger way than was authorized in the Taylor Grazing Act, or by transferring the rangelands within the national forests and conveying them, with the rangelands within the grazing districts, to the states. A third method was to obtain for the users of the range an absolute transferable right to the lands upon which they were grazing their stock. To gain any of these objectives called for a concerted attack upon the Forest Service for its so-called "Cut and Cut" policy which had reduced the number of animals allowed within the forest ranges and had also had the effect of reducing the value of ranches previously dependent upon the forest lands.

Early in 1946 Senator Edward V. Robertson of Wyoming sponsored a bill to convey to the states the unappropriated and unreserved lands within them, lands withdrawn because they were believed to contain coal, oil, gas, phosphate, potash, or other minerals, and all lands within the grazing districts. The president of the National Wool Growers Association thought the measure did not go far enough since the states were not required to take the land. It was reasonably certain that some states would not do so, that others might wish to take only the more valuable lands and that there would be nothing but confusion. He advocated that all lands in the grazing districts and in the national forests that were not multiple use, important for timber growing or water conservation, should be sold at a reasonable price, on long terms, and at low interest. As further refined, Robertson's bill would have allowed stockmen 15 years to purchase the land their stock was grazing upon, a purchase price based on the carrying capacity of the land, required 10 percent down, and the balance in 30 years, with interest at 1½ percent yearly. Lands that were not bought in this period were to be conveyed to the states. Ninety percent of the income from the sales was to go to the states. The only concession the stockmen would make to 20th century conservation thought was to allow the mineral rights to be reserved to the United States.[37]

Other proposals advanced by stockmen were to give legal status to the advisory boards of the Forest Service, to make permits irreducible, and to have the grazing lands within the forests transferred to Interior and sold, to restore the position of register of the land offices which had been abolished by President Truman's Reorganization Plan No. 3, to amend the Act of June 25, 1910, authorizing withdrawals, a power the stockmen felt had been seriously abused, to revoke withdrawals applying to Utah, and to authorize the expenditure of 10 to 50 percent of the receipts of the national forests for range improvements.[38] Many stockmen wanted to be rid of the Grazing Service altogether, to enlarge the acreage limitations on sales in the Taylor Grazing Act, and to assure that the fees charged by the Grazing Service should have no realtion to the market value of the grazing privilege.

Above and beyond these objectives was the feeling of westerners that their section had been shortchanged in that the Federal government had retained a large part of the public lands, whereas in states farther east, like Illinois, Iowa, or Kansas, all the

[36] Phillip O. Foss, *Politics and Grass*, p. 190.

[37] *The National Wool Grower*, 36 (April, August, September, November, 1946), 17, 10, 5, 16; 37 (January 1947), 11.

[38] *National Wool Grower*, 37 (March 1947), 10. Senator McCarran introduced the first 40 bills in the 80th Congress, including most of the proposals of the stockmen. *Cong. Record*, 80th Cong., 1st sess., Index Vol., p. 657.

lands had gone into private ownership. Not only was this difference unfair to the western states but, so they held, it tended to retard their development, narrowed the tax base, made economic interests subject to the whims and fancies of administrative officials and to Congress, in which the West's voice was not sufficiently regarded. Why, it was asked, should bureaucratic officials in Washington determine the number of livestock in the national forests and grazing districts, retain and restrict the development of mineral resources in the public lands, decide when and for how much stumpage in the forests should be sold and how it should be cut? It would be better for such resources to be owned and managed by the individual states whose officials would be more closely in touch with the local situation.

In 1929-33 the West had failed to agree upon state ownership of the rangelands, as has been seen, because the offer President Hoover made did not include their rich mineral resources. Without the minerals the states questioned whether the land was worth having. But if both the grazing district and national forest lands with their mineral resources could be conveyed there was no question as to the tremendous boon they would be. The opposition in Congress to the current policies of the two agencies serving the grazing and forest lands, beginning with Senator McCarran's investigation in 1941, reached a high point in 1947-53. Critics of these agencies hoped to effect either sale of the rangelands to permittees or cession to the states.

Marshall M. Kelso, a distinguished agricultural economist, examined the economic advantages or disadvantages of private ownership of low value rangelands and came up with some observations that should have caused the advocates of cession to pause. Three factors preventing the conversion of the public rangelands to private ownership were: (1) the multiple use of much of the land for wildlife, for recreation, and for watershed protection, especially the steep-sloped areas that protected the major water sources of cities like Salt Lake City; (2) the economic impossibility of much of the land paying its own way in private ownership; and (3) the fact that much of it was "not amenable to division into areas for single enterpriser control." Concerning the second point Kelso held that lands of low productivity were over-valued for tax purposes and since the grazing lands were of specially low productivity (the best having passed to private ownership long since), taxation might compel their owners to resort to overgrazing to get as much from them as possible. Studies of the taxes on privately owned rangelands showed that in Montana assessments were more than twice as much as the land was worth and on the poorest quality land they were seven times as much as the land was worth. In Nevada taxes were twice as high as the value of the forage. If the lands were conveyed to stockmen the taxes on their base property would not be lowered and the tax on the rangelands would be added to their burden, making it heavier than before the transfer, even if the grazing fee were included in their previous costs.[39] It is doubtful that leaders of the livestock industry gave much attention to the economic problems involved in the transfer of ownership.

Livestock Industry Associations

At the time Senator McCarran was conducting his vendetta against the Grazing Service there were probably less than 70,000 ranches of substantial size in the range states and no more than 20,000 livestock

[39] M. M. Kelso, "Current Issues in Federal Land Management in the Western United States," *Journal of Farm Economics, Proceedings* (November 1947), pp. 1295–1313, quoted in Marion Clawson, *The Western Range Livestock Industry* (New York, 1950), pp. 107–110, 256.

owners who relied in whole or in part on the public lands in the grazing districts. How could such small numbers so influence public opinion in the West? Although livestockmen organized in the National Wool Growers Association and the American National Livestock Association constituted a tiny fragment of the population of the western states, their political influence has generally been large, except when they seemed to be in conflict with the homestead element. Marion Clawson, when director of the Bureau of Land Management and as such responsible for the administration of the public rangelands within the grazing districts, said in 1950: "It is doubtful if today any public land policy could be adopted which was unitedly and strongly opposed by the range livestock industry. Its influence is probably greatest in a negative way, in the prevention of the measures it opposes. It cannot always obtain the measures it seeks."[40]

Because of the influence these associations exerted, they deserve attention in an account of the forces shaping land policies. The National Wool Growers had a budget of less than $50,000, provided mostly by levies on sheep raisers in the range states based on the number of their stock or the amount of wool they produced. A smaller part was raised by an annual auction of breeding rams. Their journal, *The National Wool Grower,* like every good house organ, represented the point of view of the sheep raisers in the range states, but not stridently. It provided space for views differing from its own and included more than one article dealing with range problems by H. Byron Mock, who was in charge of the Salt Lake City office of the Bureau of Land Management.[41] Only when its contributors were aroused to intense feeling by attacks upon the livestock industry or when their representatives met with those of the American National Livestock Association was it induced to take rather extreme positions on government policy and the management of the public lands.

The National Wool Grower expressed doubts about the desirability of private ownership of the rangelands. Its contributors preferred state ownership and management to Federal, and regarded private ownership as the ultimate objective, yet the journal conceded that many range users were opposed to any change. The tax system, they feared, would make private ownership altogether too costly, though there might be other gains. The small ranchers in particular were opposed.[42] The periodical gave space to a representative of the Isaac Walton League who wrote in opposition to private ownership.[43] At the Herald Tribune Forum on Western Land Policy it summarized Bernard DeVoto's and Farrington Carpenter's speeches equally, which is more than can be said for *Harper's Magazine.*[44]

The platforms adopted by the National Wool Growers at their conventions were somewhat more extreme than the views expressed in *The National Wool Grower.* In 1946 the National Wool Growers' platform advocated the establishment of a court of appeals to which decisions of the Forest Service on grazing questions could be taken, the management of public grazing lands by one department which should recognize "vested grazing rights," and require permittees to comply with the terms and provisions of their permits. It declared that grazing fees should be based on the

[40] Clawson, *Western Range Livestock Industry*, pp. 11, 381–82.

[41] "Stockmen's Use of Public Lands," *National Wool Grower*, 38 (April 1948), 12–15.

[42] *National Wool Grower*, 36 (November 1, 1946), 5; 37 (May 1947).

[43] *National Wool Grower*, 36 (November 1, 1946), 5; 37 (May 1947), 6.

[44] *National Wool Grower*, 38 (March, August, November, 1948), 11, 6, 7 ff; 44 (February 1954), 13.

cost of administration of the public domain only. It opposed the creation of national monuments by Executive order, advocated the repeal of the Antiquities Act which allowed the Secretary of the Interior to withdraw "tremendous acreages" for parks, monuments, or other recreational areas, and requested that the national parks and monuments be opened to grazing.[45] It was ambivalent on the use of Federal powers and subsidies, taking a strong position in opposition to the latter and to government controls but at the same time favoring a protective tariff on wool. In later platforms the National Wool Growers advocated the cession of the rangelands to the states, the return of the rangelands in the national forests to the public domain and either the sale of the surface rights of all the public rangelands or their cession to the states.

American Cattle Producer, the organ of the American National Livestock Association, while allotting less attention to the land question because of its absorption with eliminating controls on livestock and meat, took a harsher position. It allowed nothing favorable to the administration of the two agencies regulating grazing to appear. It gave full support to the proposal to allow the permittees in the grazing districts to purchase the land they were allotted and scoffed at the propaganda of the Association enemies as "the most vicious we have ever seen." The appointment of Julius A. Krug as Secretary of the Interior to replace Harold Ickes—the man the livestock people most hated—appeased the livestock industry to some extent. *American Cattle Producer* then turned its batteries against the Forest Service, giving much attention to hearings held in 1947 on that agency's administration of its rangelands. Among the issues brought out in the hearings were the seriousness of the cuts the Forest Service was requiring in the number of livestock on its ranges, the rapid increase of its personnel, the limited attention paid to improvement of the ranges, the insecurity of the permittees, the indifference of the Service to the destruction of the range by big game, whose numbers were rapidly increasing, and the complaint that the advisory boards were little more than window dressing.[46] *American Cattle Producer* charged that all the attacks upon proposals to convey the rangelands to the states or to sell them to permittees or to freeze established range customs on the public lands into law were inspired by and the data were prepared by the Forest Service.[47] Under the caption "A Freer Range" it welcomed the new administration which it anticipated would halt the "endless stream of capricious and arbitrary rules which strike at the ranchman's security," the frequent orders reducing the number of stock allowed in the forests, the numerous trespass cases brought for minor infractions, the lack of appeal from the Forest Service decisions.

Three Association Goals Attained

The representatives of the livestock associations obtained three changes. The first came through an Executive order, Reorganization Plan No. 3, issued by President Truman, providing for the consolidation into the new Bureau of Land Management of the Grazing Service and the General Land Office, the latter now having lost much of its previous workload as a result of the withdrawal of most public land from entry. The positions of land office registers

[45] *National Wool Grower*, 36 (February 1946), 51–56.

[46] *American Cattle Producer*, 29 (August, October, 1947), 22, 9–10. The *Producer* gave much attention to the hearing at Grand Junction where between 700 and 800 persons jammed the meeting with many standees (picture was included), 317 of whom were permittees. The writer hoped for a housecleaning in the Forest Service.

[47] *American Cattle Producer*, 34 (October 1952), 9; 34 (February 1953), 19–22, and 36 (September 1954), 23.

and survey supervisors were abolished, much to the discomfiture of some members of Congress who had found them valuable patronage. Indeed, Senator McCarran tried to re-establish the registers and brought in a measure to do so, and though the Senate Committee on Expenditures in the Executive Departments refused to report it favorably, he insisted that the Senate pass it.[48]

The second measure was an amendment to the Taylor Grazing Act increasing from 760 to 1,520 acres the amount of land in isolated and disconnected tracts that might be sold on bids at no less than the appraised value. The size of rough or mountainous tracts that might be sold to adjacent property owners, regardless of whether or not they were isolated or disconnected, was increased from 160 to 760 acres.[49] Failure to classify land for sale under these two provisions of the original Taylor Act had been a major grievance to the stockmen but the process of classification was retained in the hands of the Department of the Interior.

The third change related to the grazing fees. Inflation and the rise in the price of cattle made the old 5-cent fee seem low indeed, being 19.8 cents less than the Forest Service charged. An increase of 3 cents was adopted by the Grazing Service. This antagonized the livestock lobby which succeeded in further crippling the Service by reducing its appropriations for 1948 below those of 1947. On August 6, 1947, Congress approved an amendment to the Taylor Act stressing "reasonable fees," and providing two fees, one for use of the range and the other for improvements of the range. On the day of this enactment the Department put into effect a 6-cent fee for use and a 2-cent fee for improvements.[50] The act also reduced the proportion of income from fees going to the states of origin from 50 percent to 12½ percent, changed the distribution of income from fees on Indian lands to eliminate the 25 percent for range improvements and to return 33⅓ percent to the states of origin and 66⅔ percent for the benefit of the Indians. Income from fees received for leasing isolated tracts was to be used for range improvements and 50 percent was to go to the states of origin.

Proponents of Collective Interests Speak Out

The McCarran committee and the Robertson committee together had listened almost entirely to the grievances of the livestock people. Private ownership, even if it involved greater cost, seemed preferable to them, though other western interests which were deeply interested in the flow of money from the exploitation of the forests, minerals, and grazing lands to Washington and then into reclamation development and back to the counties and states of origin, looked upon the question in a very different way. Little appreciation of the objectives of the conservation movement, as spelled out in the Taylor Grazing Act or as practiced by the Forest Service and the Grazing Service, was permitted to show in the reports of the two committees. Dislike of Harold Ickes, who was trying to make Interior into the Department of Conservation, was paramount with the McCarran committee and dislike of Federal ownership and management of the rangelands permeated questioning and reports of both committees.

Mention of the Forest Service in a derogatory way was sure to arouse opposition from the conservationists. To suggest the

[48] 60 Stat., Part 1, p. 1100; *Cong. Record*, 80th Cong., 1st sess., June 16, 1947, p. 7023. It could be argued that the disappearance of the Grazing Service was no gain for the livestockmen because its reputation had been blasted so effectively by the McCarran committee that its usefulness had been impaired whereas the new Bureau of Land Management could start with a clean slate.

[49] Act of July 30, 1947, 61 Stat., Part 1, p. 630.

[50] 61 Stat., Part 1, p. 790; Peffer, *Closing of the Public Domain*, pp. 269 ff.

elimination of its rangelands from the forests was to strike a death blow at the Forest Service. Conservationists and foresters sprang to the defense and began an outright attack upon their critics. First to attack was Bernard DeVoto, a native westerner, an authority on Mark Twain, an historian, and a regular contributor to *Harper's Magazine.* DeVoto was not one merely to defend; instead he swung his literary hatchet right and left, cutting down the stockmen, their lobbyists, and defenders. "They were always ignorant and deluded .... They thought of themselves as Westerners and they did live in the West, but they were enemies of everyone else who lived there." They kept out the homesteader by terror or bankrupted him if he could not be otherwise eliminated, squeezed out the small stockman by grabbing the water rights and even resorting to murder. Though they owned but a minute fraction of the range they convinced themselves that it was theirs and tried to gain title through the final liquidation of the public domain. They paid in fees only a small part of the value of the forage; in effect, they received a subsidy from the Federal Treasury. Worst of all they plundered the public lands by overgrazing, destroying the natural forage and leaving only desert areas covered with weeds unfit for forage. Now, said DeVoto, the stockmen want to convert their grazing privileges into an ownership right, they want the remaining rangelands distributed to the states in which they are located, and they want to eliminate all lands suitable for grazing from the national forests and have them transferred to the states. Beyond that they hope to wrest from the Forest Service control of all forested lands and confine its attention to reforesting areas already stripped of their cover. To achieve these objectives they had forced the sharp contraction of the staff of the Grazing Service by reducing appropriations, thereby permitting widespread and flagrant trespasses on the public ranges to go unpunished.[51]

Next in the onslaught against the "cow bloc" as some called the stockmen's group, were two articles by Lester Velie, a popular writer for *Collier's.* Smartly written and illustrated, these articles entitled "They Kicked Us Off Our Land," were calculated to raise prejudice against the livestockmen and their lobby which by now was trying to have the grazing lands eliminated from the national forests. Richard Neuberger, later to be Senator from Oregon, in an article entitled "Looting the National Forests," challenged the position of the livestock industry which had emasculated the Grazing Service and now proposed to eliminate the grazing lands from the national forests and to turn them over to the cattlemen and sheepmen using them.[52]

Even the staid old *Atlantic Monthly,* which was less inclined to get out on the firing line than its more popular contemporary, *Harper's,* joined in the defense of the land administering agencies by a force-

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[51] Bernard DeVoto, "The West against Itself," *Harper's Magazine,* 194 (January 1947), 1 ff.; and DeVoto's "Easy Chair," 45–48; and "The Western Land Grab," *Harper's,* 194 (June 1947), 543–46 and "U.S. Forest Service and Western Land Grab," *Harper's* (January, May, 1948), 28–31, 441–444. These are partly reprinted in DeVoto, *The Easy Chair* (Boston, 1955).

Arthur M. Schlesinger, Jr., in *The Politics of Hope* (Boston, 1962), pp. 155–82, assesses the role of DeVoto's struggle against efforts to break down the conservation policy and turn the rangelands over to the stockmen.

[52] Lester Velie, "They Kicked us off our Land," *Collier's,* 120 (July 26, 1947), 20 ff. and (Aug. 9), 73 ff., and reprinted in *Reader's Digest,* 51 (November 1947), 109–113; Roscoe Fleming, "Bars up or Down for Grazing. Public Land for Livestock Use. Stirs Broad Controversy," *Christian Science Monitor Magazine,* April 26, 1947, p. 7; Richard L. Neuberger, "Looting the National Forests," *The Nation,* 164 (April 26, 1947), 471–73. For a restrained defense of the proposal to reverse the Federal ownership trend by providing for their transfer to the states or sale to private owners see the *Denver Post* in *Cong. Record,* App., 80th Cong., 1st sess., p. A770.

ful article that pulled no punches in dealing with the "rigged hearings" of the House Committee which were designed to "throw fear into the U.S. Forest Service," the "transparent manipulations of the meetings, the bias displayed by the chairman . . . the very odor of the meetings . . . ."[53]

Before they were through, DeVoto, Velie, Neuberger, and the battery of defenders of the Forest Service quartered in the schools of forestry succeeded in blunting the attack on the two agencies and, indeed, in partly reversing it.[54] Administration of the grazing districts, now in the Bureau of Land Management, began to recover from the recent onslaughts, partly because it was apparent the livestock people were not altogether in agreement, either that private ownership was superior to public management or that the appropriations for range management should be so greatly restricted. G. E. Stanfield of the National Advisory Board testified before a House Appropriations Committee that the staff had been cut too deeply. Even the spokesman for the National Wool Growers Association declared in 1949 that additional funds and staff were necessary to assure proper administration.[55] As a result, the rangelands were not opened to sale to permittees, the forest rangelands were not eliminated from the national forests, and cuts in the number of permitted livestock continued to be made to improve the carrying capacity of these ranges.

It can be said that the advocates of private ownership of the rangelands overreached themselves in 1946-48 and did the same again in 1953-54. A plank in the Republican platform of 1952 reflected the views of the two principal stockmen's associations[56] by calling for:

> An impartial study of tax-free Federal lands and their uses to determine their effects on economic and fiscal structures of state and local communities. . . . In the management of public lands and forests [the Party] favors legislation to define the rights of grazers and other users, to provide the protection of independent judicial review against administrative invasions of those rights, and to protect the public against corrupt or monopolistic exploitation and bureaucratic favoritism.

The stockmen drafted a bill to stabilize and make permanent grazing privileges already in existence on a temporary basis which, as the *American Cattle Producer* said, would freeze range customs into law. When introduced into Congress early in 1953, it ran into even stronger opposition than the similar proposals of 1946-48. Redrafted to eliminate some of the features which the small stockmen and the milder conservationists found objectionable, it won the approval of the Department of the Interior, but could make no progress. Perhaps it was the fact that conservationists had been so well alerted and organized, particularly on any measure affecting the national forests, that even a more moderate measure had no chance of adoption. As Wesley D'Ewart of Montana explained, the Uniform Federal Grazing Land Tenancy bill was intended to assure permittees the full right to the value of improvements they made on the range and to establish a procedure by which appeals could be made from decisions of the Forest Service and the Bureau of Land Management to a special court, a privilege not available at the time. This court, conservationists pointed out, would take out of the hands of experts the final decision on grazing matters. What alarmed them most was the fear that the measure, which would give permanent rights to grazers, might be a

[53] Arthur H. Carhart, "Who Gets our Public Lands," *Atlantic Monthly*, 182 (July 1948), 57–61.

[54] Miss Peffer has worked this out in "The Grazing-District Sale Proposal," Chap. XVI, *The Closing of the Public Domain*, pp. 279 ff.

[55] *National Wool Grower*, 38 (May 1948), 17; and 39 (February 4, 1949), 5–7.

[56] Taken from *The World Almanac, 1953*, p. 48.

first step toward allowing them to buy the land in the future.[57]

Congress was not inclined to open the rangelands to sale or to freeze existing rights in the use of the grazing districts or national forest ranges. Nevada livestockmen who had shown less interest in having the rangelands of part of that state included in the grazing reserves, changed their minds. To include the lands they used within the grazing districts an amending Act of May 28, 1954, removed the limitation of 142 million acres on the amount of public lands that might be included within them.[58] Although there was much talk about restoring public land that had been withdrawn to mineral or other form of entry the statistics show that on balance the quantity restored to entry was small. During 1954 and 1955, 3,821,000 acres were restored to their original status, of which 2,181,000 were in Alaska and not in great demand. New withdrawals amounted to 2,416,000 acres, being largely in Arizona, Idaho, and Utah.[59] During the period 1954-59 a total of 8,155,840 acres were withdrawn and 11,057,649 were restored to entry. Between 1948 and 1956 the number of cash sales increased from 350 to 6,041 and the acreage sold from 33,592 to 197,784. The Act of July 30, 1947, enlarging the maximum amount of scattered, noncontiguous land not capable of administration that could be bought was partly responsible for the increase. The big increase in the number of sales was in the small tract purchases. Urban people were eager to acquire some land, particularly small tracts in the desert, in mountain areas, or elsewhere away from the crowded cities. In 1960 so strong was interest in small tract sales that 10,000 contracts for 38,000 acres were completed.[60]

Officials of the Department of the Interior urged reforms to safeguard and develop the natural resources for the public good. Land speculators have always been in the vanguard of settlers and land buyers, as this study has indicated in many places. Secretary Fred Seaton and Edward Woozley, head of the Bureau of Land Management, were troubled by speculator attempts to accumulate homesites under the small tract laws by operating through others. Another dodge to which speculators resorted was that of buying small pieces of land and using them to acquire substantial tracts of public lands as adjoining owner preference rights under the Taylor Act. In Nevada a provision of the Desert Land Act had permitted "unscrupulous land locators" to bilk the public by unloading on them land wholly unfit for their use because of lack of water. The practice of making land exchanges under Section 8 of the Taylor Grazing Act, which had enabled people to acquire public lands at less than their market value and gain "windfall profits," was halted by a publicity program to "inform the public of their rights and privileges under the public land laws, and to ... implement the Department's anti speculation policy."[61]

Shorter workdays, paid vacations, and better pay were making it possible for an

[57] Secretary of the Interior Douglas McKay was reported in the *Great Falls Tribune* (Montana) to have spoken strongly against the original D'Ewart bill. In his first annual report as Secretary his position is not as clear. He spoke of the need for a reappraisal of the Federal lands "to determine which . . . should be retained in Federal ownership and which can be more economically and satisfactorily administered by transfer to State or private ownership." This and other statements were regarded by some as close to the D'Ewart–Butler plan of making much of the public land available to purchase by users. McKay's position may be seen in Secretary of the Interior, *Annual Report, 1953*, pp. xxx and elsewhere.

[58] 68 Stat., Part 1, p. 151.

[59] Secretary of the Interior, *Annual Report, 1954*, pp. 269–70; and *1955*, p. 268.

[60] Assembled from *Reports of the Director of the Bureau of Land Management, Statistical Appendix, 1948-1956*. Secretary of the Interior, *Annual Report, 1960*, p. 243.

[61] Secretary of the Interior, *Annual Report, 1960*, pp. 236, 241.

ever growing number of people to travel, to "see America," visit the parks, forests, and historic spots. The country was filling up and recreation experts, conservationists, and sportsmen were stressing the importance of keeping open spaces for the use of future generations. In three acts in 1954, 1959, and 1961 Congress authorized the transfer to the administrative agencies of each state for recreation purposes up to 12,800 acres in each of 3 years and thereafter 6,400 acres annually, in addition to smaller allowances of public lands to minor civil divisions.[62]

Conservationists of all varieties welcomed the enactment of a measure ("The Multiple-Use Act") on June 12, 1960, declaring that the national forests "shall be administered for outdoor recreation, range, timber, watershed and wildlife and fish purposes," supplemental to their original purpose. The act emphasized multiple-use and sustained yield management, making these objectives no longer permissive but required. This represented a great change in public attitude toward natural resources from the situation a decade earlier when it appeared for a time that the rangelands of the national forests and of the grazing districts might be opened to private ownership.[63]

The declining carrying capacity of the public ranges, the intrusion of harmful weeds and the destruction of the better grasses, gave serious alarm to some land economists; in other quarters these were regarded as temporary evils that good rains would cure. A scientific appraisal of the public lands was needed. This Congress provided for in 1962 and the results are instructive. In 1963 reports were available on three states: Colorado, Montana, and Oregon.

In the San Luis Valley of Colorado the ranges were reported "in poor or very poor vegetation condition and others in a downward trend made up 40 percent of the total acreage." For two counties in Montana the ranges were "in poor or very poor vegetation condition and other ranges with a downward trend make up 34 percent of the total acreage." In Oregon the ranges were "in poor or very poor condition and others with a downward trend made up 70 percent of the total acreage." A cumulative summary showed 1.6 percent of the range excellent, 15 percent good, 53.1 percent fair, 25.8 percent poor, and 4.5 percent bad.[64] More alarmist was the opinion of Kenneth B. Pomeroy, chief forester of the American Forestry Association, who said that, despite the efforts of the Bureau of Land Management since 1949 to reduce grazing pressure on the public lands and its modest program of range rehabilitation, it would take more than a century to restore the range.[65] During the past decade, he said "the gullies have grown deeper, the soil had deteriorated further, and the vegetation has become sparser . . . ."

Although the users of the public ranges under the Bureau of Land Management naturally preferred to keep their fees at a low level, Congressmen who closely watched income and outgo of administrative agencies were troubled at the differences between the two. Bureau representatives thought that a major factor in the difference between the income from fees and the overall cost of administration, as shown in the table,[66] was the multiple purposes which were increasingly inherent in all public land management programs.

[62] Acts of June 4, 1954, Sept. 21, 1959, and Sept. 13, 1960, 68 Stat., Part 1, p. 174; 73 Stat. 571; and 74 Stat. 899.

[63] 74 Stat. 215; *Report of the Chief of the Forest Service, 1960*, p. 18.

[64] Secretary of the Interior, *Annual Report, 1963*, pp. 60–62.

[65] *Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, United States Senate on Review of the Taylor Grazing Act*, Part 2, 1963, p. 933.

[66] *Hearings . . . on Review of the Taylor Grazing Act*, Part 2, p. 429.

EXPENSES AND RECEIPTS ON BLM GRAZING LANDS FOR 1933[a]

Admin. of Grazing Lands	$3,353,475
Fire Suppression	653,884
Soil and Moisture Conservation	6,345,418
Weed Control	894,196
Proportion Share for General Admin.	515,846
Total	11,762,819
Grazing Receipts	2,780,252
Appropriated for Payments to States	438,447
Appropriated for Range Improvements	696,525
Net to the United States	1,645,280

[a] *Hearings before the subcommittee on Public Lands of the Committee on Interior and Insular Affairs*, United States Senate, 88th Cong., 1st sess., on *Review of the Taylor Grazing Act*, Part 2, p. 429.

Yet the difference seemed very large, particularly when the BLM fee of 19 cents was compared with the 60 cents charged by the Forest Service, $1.25 by the Indian Bureau, and $3 by some private owners.[67] All western states charged for their grazing lands fees that ranged from 300 percent to 1,875 percent higher than the BLM fees in the same states.[68]

A subcommittee of the Senate Interior and Insular Affairs Committee held a 3-day hearing in Reno on the proposal to increase the grazing fees of the BLM. There were present 124 Nevada ranchers and others representing the livestock industry of that state and a sprinkling of spokesmen from other range states who testified with unanimity against an increase. Representatives of conservation groups and of the Department of the Interior supported an increase and some of the former protested against the same dreary testimony which livestockmen had spread on the hearings for years, justifying their unwillingness to pay as much for the use of the public range as other livestock people were being asked to pay in the national forests, on state and privately owned lands.[69] Secretary Udall, who was quoted as saying that the fee question was "studied to exhaustion," and who had postponed an increase in 1962, felt that the decision could not be delayed further. The fee was increased from 19 cents to 30 cents and at the same time the allocation of income from fees for range improvements was increased from 25 percent to 33⅓ percent.[70] An important factor in the decision was the multiple-purpose concept in range management. The fate of the lands was no longer to be determined by a single economic group.

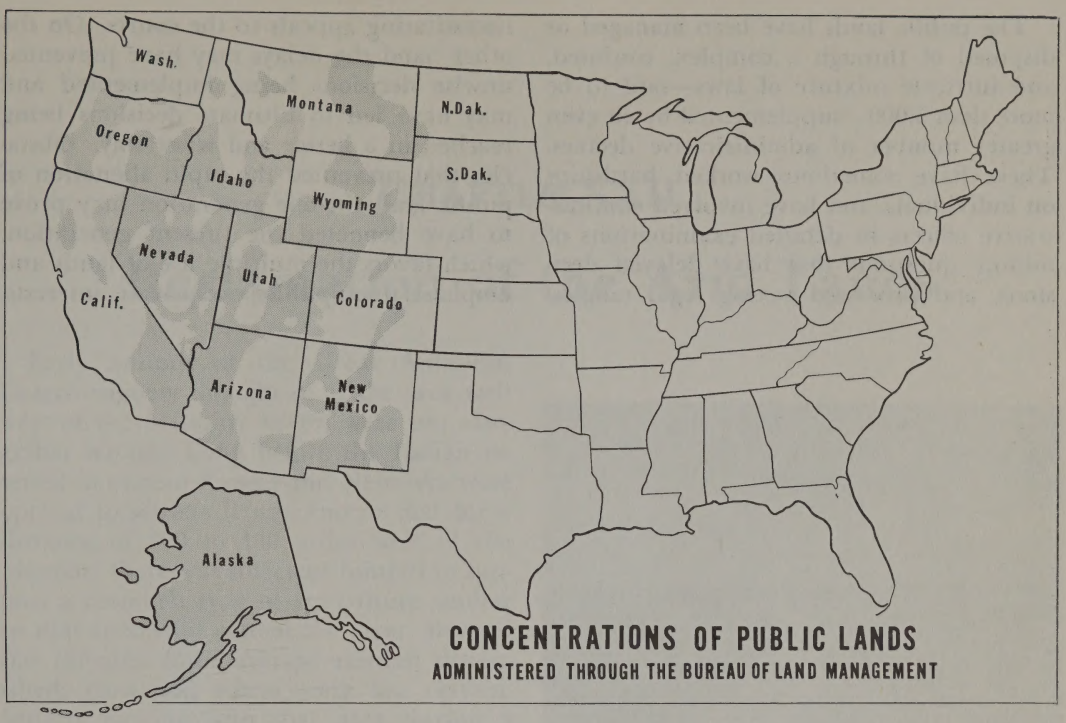
[67] *Ibid.*, p. 431.
[68] *Ibid.*, p. 403.
[69] *Ibid.*, pp. 931 ff.

Summary of Grazing Operations on the Public Lands

A summary of the grazing operations under the jurisdiction of the Bureau of Land Management as of 1966 illustrates how extensively its policies apply to the Intermountain and West Coast States. A total of 155,382,386 acres of federally owned lands are included within the grazing districts, of which 138,614,140 acres are public lands and the balance are reserved or withdrawn lands. In addition 18,436,978 acres of public lands are leased under Section 15 of the Taylor Act which authorized the leasing of lands not suitable because of location for inclusion in grazing districts. Income from both leases and permits came to $4,665,895 in 1966. Regular permits were issued to 17,820 persons; free use permits, crossing permits, and exchange of use permits were also issued. The Federal grazing districts supported 2,650,081 cattle and horses, and 6,021,592 sheep. In addition, on leased Federal land 8,198 operators grazed 1,225,218 cattle and horses and 1,910,031 sheep.

Many people in the stock raising and heavily forested parts of the western states have continued to maintain that the phrase

[70] Secretary of the Interior, *Annual Report, 1933*, p. 66. Following are the fluctuations in the fee from 1936 when it started at 5¢ per animal month: 1937, 8¢; 1950, 12¢; 1958, 19¢; 1959, 22¢; 1961, 19¢.



Bureau of Land Management

"pending final disposal" of the public lands in the Taylor Act meant in 1934 that Congress thought it was providing for the creation of grazing districts as a temporary step to prevent further destructive use of the ranges and that a permanent measure would be forthcoming some time in the future, presumably one that might permit the land in the districts to go into private or state ownership. Congressman Wayne Aspinall of Colorado, without indicating any position on the question, said at a public hearing in 1965 that one of the objectives of Congress in creating the Public Land Law Review Commission was to make recommendations for a final decision concerning the rangelands.

> Are we going to set some of them aside as a national reserve as we have the Forest Service lands, so that they will never be disposed of; or are we going to administer them only until they are finally disposed of to private individuals? Then there is a policy we have had heretofore and which still exists, that those lands which will support a family unit-type operation are to be disposed of for agriculture or livestock purposes.

The Congressman's statement followed testimony presented by Charles H. Stoddard, Director of the Bureau of Land Management, to the effect that the Bureau of the Budget questioned the propriety of appropriations asked for the public lands on the ground that it was improper to invest public funds in lands that were "pending final disposal" presumably into private ownership.[71]

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[71] "Policies, Program, and Activities of the Department of the Interior," *Hearings before the Committee on Interior and Insular Affairs of the House of Representatives*, 89th Cong., 1st sess. (Serial No. 1), Part II, p. 342.

The public lands have been managed or disposed of through a complex, confused, and intricate mixture of laws—said to be more than 5,000—supplemented by an even greater number of administrative decrees. These have sometimes worked hardships on individuals, and have involved administrative officers in detailed examinations of minute questions that have delayed decisions, and produced vexing legal tangles, necessitating appeals to the courts. On the other hand the delays may have prevented unwise decisions being implemented and may have led to ultimate decisions being reached in a better and wiser way. Obstacles that prevented the rapid alienation of public lands in one generation may prove to have benefited the present generation, which favors the multiple use of lands and emphasis upon public, not private, interests.

CHAPTER XXII

Reclamation of the Arid Lands

Early notions of the Great American Desert, vaguely thought of as the area well west of the Missouri River, were not altogether wrong. Long before the Indian reserves in eastern Kansas and Nebraska were opened to settlers it was known that for a distance of 100 to 150 miles west of the Missouri there was sufficient rainfall to support a corn-belt type of agriculture similar to that successful east of the river. Beyond the 150-mile limit average rainfall diminished; corn and wheat were less certain. Settlers moving into that area during a cycle of wet years were soon forced out when the cycle changed and moisture was insufficient to produce the kind of crops the people had been accustomed to raise elsewhere. The semi-aridity of the High Plains east of the Rocky Mountains, and the desert and near-desert conditions of much of the Interior Basin were only to be conquered by new methods such as dry farming, experiments with exotic plants that took less moisture than corn, artesian wells and deep drilled wells, storage ponds to hold the spring runoff of melted snow, small reservoirs and later high dams, and the construction of expensive canals, pumping stations, and many miles of ditches. To experiment, adapt, and change their methods was something all settlers found necessary when they moved west to subjugate new frontiers, regardless of their region of origin. Westward-moving Americans had gained much valuable experience in farming the treeless prairies of Illinois and Iowa that prepared the next generation of pioneers to some extent for the new problems they had to face on the Great Plains.[1]



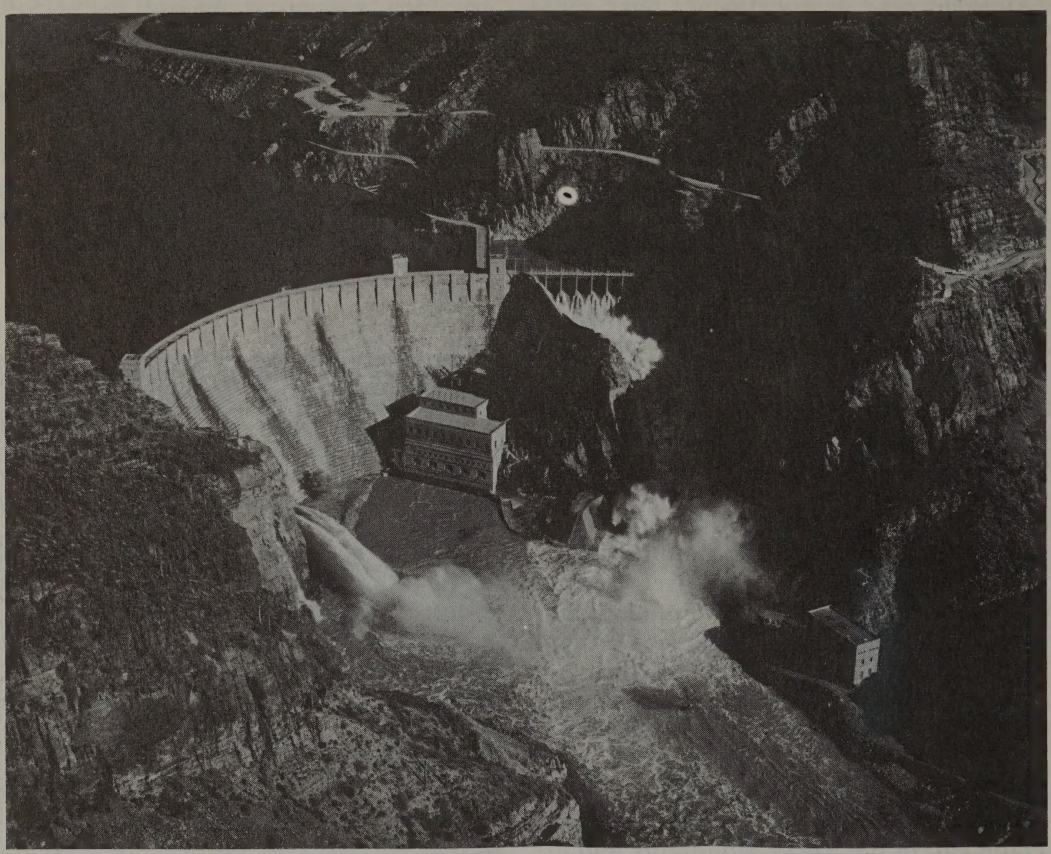
The Arid Lands

Bureau of Reclamation
U.S. Department of the Interior

As settlers were driven by the inexorable pressure for land into the region beyond the 100th meridian, they naturally selected

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[1] Walter Prescott Webb, *The Great Plains* (Boston, 1931), is a classic account of the efforts of settlers to adapt themselves to the semi-arid regions; W. Eugene Hollon, *The Great American Desert Then and Now* (New York, 1966), examines the application of "desert" to various regions but is naturally most concerned with the Interior Basin.



Theodore Roosevelt Dam and Reservoir, Salt River Project, Arizona

Bureau of Reclamation

first the land along streams or near springs where water was available. It took no great imagination on their part to use the water to irrigate the land by tapping a stream a little above a cultivated plot. Indians had done just this in the Southwest, Spanish missionaries had built on their experience, and the Mormons had early succeeded through cooperative action in storing water to irrigate valley land that was dry. By 1875 Utah had invested $2,421,494 in building diversion dams and 2,095 miles of principal canals and 4,883 miles of tributary canals and ditches to irrigate the desert. Most of the 9,452 farms and the grain, vegetable crops, and better pastures of the territory were dependent on irrigation. In other states and territories similar irrigation projects utilizing the water of mountain streams were under way. Not all these ventures were successful but a good deal of experience had been acquired in developing them.[2]

[2] Leonard J. Arrington, *Great Basin Kingdom. An Economic History of the Latter Day Saints 1830–1900* (Cambridge, Mass.), pp. 51–53, 224; George D. Clyde, "History of Irrigation in Utah," *Utah Historical Quarterly*, XXVII (January 1959), 27–36, in-



Reclaimed Lands

Bureau of Reclamation

As they had always done, ever since the passage of the Enabling Act for the admission of Ohio in 1802, western representatives looked to the Federal government for aid—this time for the development of the arid lands of the West through irrigation. Various proposals were considered such as (1) granting alternate sections of land to capitalists who would undertake a large-scale irrigation project with dams, reservoirs, canals and lateral ditches; (2) the sale or grant of land up to 640 acres to persons who would conduct water to it; (3) the sale at low cost of large blocks of land to incorporated companies; and (4) donations to the semi-arid states to enable them to carry out irrigation projects at a time when few imagined the Federal government could be induced to do so. All but the first of these plans were to be tried, and in addition the Federal government undertook irrigation projects itself.

S. S. Burdett, Commissioner of the General Land Office, maintained in his report for 1875 that the need for farm products in

cludes a picture of an irrigation canal cut out of solid limestone in 1861–62 that is still in use. In the agricultural volume of the Census of 1880 there is some attention to crops grown on irrigated land in California but no statistics.

the mining states of the West could only be met through irrigation of the arid lands and that larger units of entry than could be obtained under the Homestead and Preemption Acts were necessary to make their production feasible. In that year Congress was persuaded to authorize settlers to purchase tracts up to 640 acres in the high arid country east of the Sierra Mountains in Lassen County, California, to reclaim them by irrigation. After "making satisfactory proof of the reclamation" of the tract by conducting water to it, citizens, or persons who had taken the first step toward citizenship, could enter the land at $1.25 an acre at the end of 2 years. Timber, mineral, and grass lands were excluded and only desert lands that could not produce a crop without reclamation were eligible for entry.[3]

The experiment in encouraging desert farming in Lassen County through reclamation seems not to have attracted much attention, for the Commissioner of the Land Office did not later allude to it, except when called upon for information by the Senate Committee on Public Lands. He then reported, in 1877, that no complaints had come to his attention about the measure and that "settlers were availing themselves of its provision, and that a large amount of otherwise worthless land is being fitted for cultivation."[4] Williamson's statement to the Committee on Public Lands is somewhat difficult to reconcile with his conception of the desert lands as expressed in his report of 1876. There he said that nearly all the desert land capable of being easily irrigated by the water of small streams had already been improved by "individual enterprise or small corporate capital" and that henceforth large aggregations of capital would be necessary to utilize the water of the Platte, the Weber, the Bear, the Jordan, and the Humboldt in sufficient volume if large areas of arid lands were to be brought into cultivation.[5]

The Desert Land Act

Whatever Williamson's views were regarding the efficacy of the Lassen County Desert Land Act, Senator Aaron Sargent of California and Representative LaFayette Lane of Oregon thought well enough of it to bring into Congress in 1877 a measure to extend provisions of the Lassen County Act to California, Oregon, and Nevada and to the Territories of Washington, Idaho, Montana, Utah, Wyoming, New Mexico, and Dakota (only Colorado was excluded). Instead of making the payment due in 2 years after the initial filing and proof of improvement had been offered, the enlarged bill provided that on the filing of the application a payment of 25 cents per acre was to be required, 3 years were to be allowed for the completion of the improvements at the expiration of which time the balance of $1 an acre would be due. One or two minor safeguards were included in the very loose measure that emerged from the House: individuals could make only one entry and the 640 acres selected were to be in reasonably compact form.

Discussion in the Senate scarcely touched upon the need for tightening the bill to avoid the pitfalls that usually appeared in settler-oriented legislation, and the House passed it without raising any queries. The Desert Land Act thus joined the Timber and Stone Act, the Timber Cutting Act, and the Timber Culture Act as one of the four significant measures adopted ostensibly to aid settlers in gaining ownership of land and timber they needed, but which were commonly used by larger economic interests always glad to appeal to pro-homesteader sentiments to gain their ends. All four of the measures were enacted without careful consideration by the Committees

[3] *GLO Annual Report, 1875*, pp. 6–7; 18 Stat. 497.

[4] *Cong. Record*, 44th Cong., 2d sess., Feb. 27, 1877, p. 1965.

[5] *GLO Annual Report, 1876*, p. 7.

on Public Lands of the errors and weaknesses long since apparent in the preemption and homestead laws and in the cash sale law when applied to timberlands.[6]

The ink was hardly dry on the Desert Land Act before complaints reached the Land Office that there were loopholes in the act that Congress should close by explanatory and more carefully drawn restrictions. One story was told about a man who hauled a can of water to his claim, poured it into a furrow, and then swore, and his friends supported him, that he had conducted water on his claim.[7] Another person, to gain control of the lands near a stream filed an application for land in zigzag shape with 44 corners. The California surveyor general declared that though irrigation of the desert lands of southern California was vital to its future development, irrigation could not be accomplished by individual enterprise as the act contemplated. Similarly, the Idaho surveyor general said that the act could only be successful if capitalists lent sufficient funds to those entering 640-acre tracts to enable them to accumulate enough land to justify spending large sums in conducting water to it. He might have quoted from the report of John W. Powell, as did the Arizona surveyor general, that more than three-fourths of all future redemption of land by irrigation would require the expenditure of a million and more dollars in each enterprise. In Arizona it was said that abuses of the Desert Land Act were expected to become so common that they would lead to such a strict interpretation of the law as to make it impossible to gain ownership under it.

Commissioner Williamson was not one to pull his punches in reporting on poorly drafted legislation. The Desert Land Act "is a good law, from which most beneficial results should and would be obtained, if it could be fully carried into effect," he declared. But it was "somewhat loosely drawn"; it provided no protection against one who put "very little water upon the land," and a strict interpretation which he proposed to give to it would practically defeat its operation. "To be required to irrigate *all* of a tract of 640 acres of land, except in very rare cases, is to require something well nigh impossible, or, if possible, something so expensive that no person or corporation could afford to do it until lands for cultivation are far more valuable than they now are." Williamson recommended the early repeal of the act and the enactment of a law giving to persons or corporations all the truly desert lands which they might fully reclaim by irrigation. There was no reason why desert lands in any amount should not be given to those who irrigated them; humid lands which did not require such large investments of capital were being given away free.[8]

The opportunity to acquire 640 acres of public lands, "arid" or "desert" though they might be, proved immediately attractive. Between the signing of the act on March 3, 1877, and June 30, 731 entries had been filed for 269,307 acres, of which 467 for 166,665 acres were in California and 139 for 42,652 acres were in Utah.[9] The following year the number of entries reach 1,008 for 310,553 acres; the number fell to 426 entries in 1881 and to 568 in 1882; in 1883 they increased to 1,254. It appears that few of these entries were carried to title within the 3 years allowed for making the improvements. Commissioner McFarland, noting this fact, reasoned that most filings had been made for speculative purposes in violation of the restrictions of the law, and complained that the lands were being held for grazing without settle-

[6] *Cong. Record*, 44th Cong., 2d sess., Jan. 6 and Feb. 27, 1877, pp. 464, 1964–74.

[7] *GLO Annual Report, 1877*, pp. 296, 322–23; and *1880*, p. 277.

[8] *Report, 1877*, pp. 33–34.

[9] *Ibid*, p. 41.

ment and without costing more than the original 25 cents an acre paid when the application was made.[10] On contested cases it was found that little or no attempt had been made to irrigate the land being claimed and that many of the claims were for land obviously not desert. By 1883 McFarland had had enough of frauds under the Desert Land Act and saw no other solution than repeal. He was at the same time advocating repeal of the Preemption, Timber Culture, and Timber and Stone Acts which were also being fraudulently used.

It took Commissioner Sparks to make the public aware of the frauds being committed under the Desert Land Act. He found that nonresident dummies, including women, were being used by improvement and cattle companies to gain title to large areas and that officials of the Land Office had seriously relaxed requirements to ease the path to ownership for such interests.[11] For example, the Union Cattle Company and the Goshen Hole Ditching Company, both owned by groups of which Thomas and Frank Sturgis were the leaders, had ownership of 55 desert land entries in Wyoming, 51 of which had been proved up and for which the final certificates had been issued in the 2 weeks before Sparks assumed charge of the Land Office. Sworn testimony had been presented showing that ditches had been constructed and ownership of ample water rights obtained to make possible raising crops on the land, though no crops had as yet been produced. Investigation, however, brought out that the few observable ditches were mere plow furrows and were neither useful nor intended to be so. Of the 55 entrymen, seven lived in Wyoming, seven in New Jersey, 30 in New York, and 11 in Massachusetts. Testimony based on interviews with nine of these "foreign entrymen" revealed that they had filled out the applications "to oblige a friend," never considered that they had any interest in the lands or in any water rights, and that one officer of the companies was a final witness in 20 cases, a second officer was witness in 49 cases, and Thomas Sturgis was witness in 19 cases. Three of the claims were established on good grassland.

In Arizona the surveyor general reported "the woods are full" of speculators resorting to "all manner of schemes . . . to gratify the gambling propensities of the age in which we live, and I fully believe more perjury is committed" under the Desert Land Act than at any previous time in the history of the territory. Residents of St. Louis, Peoria, Chicago, and other eastern cities appear among the entrymen seeking to take advantage of the law as "sharpers and speculators, most of them alien to our soil." He urged that rigid settlement requirements be included in the law to prevent the use of dummies by the cattle companies.[12]

In contrast to the Commissioner's view that the Desert Land Act was being so flagrantly violated by speculators, land companies, and cattlemen that it should be repealed, the Governors of four western territories—Montana, Wyoming, Idaho, and Utah—were convinced the measure was a godsend, making possible economic units of land for grazing, if not for irrigation farming. The Governor of Wyoming even went so far in his annual message of 1883 as to invite the attention of men wishing to enter the cattle industry to the opportunity of acquiring a total of 1,120 acres with

[10] *GLO Annual Report, 1883*, p. 8; *1884*, p. 8.

[11] *Report, 1885*, pp. 73–75.

[12] *GLO Annual Report, 1887*, pp. 503–507, 522–24. For Thomas Sturgis' part in the cattle industry see John Clay, *My Life on the Range* (Norman, Okla., 1962), *passim*. Most historians of the range cattle industry have given attention to the fencing question but allot little space to the processes by which cattlemen gained ownership of their large acreages, other than to say that they bought from others. It was practically impossible for large ownerships to be established in the range cattle states except through perversion of the land laws.

entries under the Preemption, Homestead, Timber Culture, and Desert Land Acts. He also said that a married man could extend his holdings still further by having his wife enter a second desert land claim of 640 acres.[13]

It was impossible for the General Land Office, with its inadequate staff, to investigate the thousands of entries being made under homestead, timber culture, preemption, and desert land laws. In 1890 alone, 80,000 entries were made in 108 land offices. Attention could be given only to those entries which had given rise to complaints or which on their face appeared suspicious. Thousands of doubtful entries went to patent each year, many of which later were proved to be fraudulent. Moreover, the chances of proving fraud in those investigated were not good, defended as these entries usually were by the most skillful land attorneys in the country, such as Britton and Gray of Washington.[14]

It was about this time that Elwood Mead, state engineer for Wyoming and later to be one of the great architects of the American reclamation policy, said of the Desert Land Act that it offered the most convenient means of acquiring title to land. Hundreds of ditches were built solely for this purpose by parties who had no intention at the time of cultivating the lands, but irrigated them in order to acquire title.[15] Later Mead slightly modified his judgment of the Desert Land Act, saying it was "both useful and injurious." It was not suited to corporate enterprise or to reclaiming large valleys but operated to transfer to single owners miles of water fronts which should have been divided into small farms. Yet it had added somewhat to the taxable and productive wealth of the western states.[16]

Congress became convinced that the Desert Land Act needed tightening up, or even suspension, pending further consideration of the best way to aid in reclaiming the arid lands of the West without letting them fall into the hands of "monopolistic speculators." The first step was taken in 1888, as a result of fear that the rapid alienation of the dry lands then underway, mostly for speculation, would hinder, rather than bring about early utilization. The Geological Survey, whose head was Major John W. Powell, was provided with an appropriation of $100,000 and directed to press forward the survey of public lands suitable for irrigation. All lands designated by it for reservoirs, "necessary for the storage and utilization of water," including canals and ditches, for irrigation purposes and all land susceptible of irrigation by anticipated development were to be reserved from sale or other entry.[17]

Strong anti-monopoly Congressmen such as Lewis Payson and William B. Holman opposed this measure of 1888, which was a rider to an appropriation bill, on the ground that it was too broad and would delay development of the dry lands because classification by the Geological Survey was a very slow procedure. They were troubled because instructions sent to the local land officers by the Commissioner of the Land Office were so rigidly drawn that they virtually repealed the Desert Land Act,

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[13] John T. Ganoe, "The Desert Land Act in Operation 1877–1891," *Agricultural History*, XI (April 1937), 145.

[14] In this situation the General Land Office found reason to order investigation of 130 desert land entries in 1890. The total number of cases being investigated in that year was 666. Of this number hearings were ordered in 14 cases, 53 were held for cancellation, 53 were examined and approved, 320 were waiting reports from investigating agents and local officers, and 473 remained pending at the end of the year. *GLO Annual Report, 1890*, p. 339.

[15] Stanley Roland Davison, "The Leadership of the Reclamation Movement, 1875–1902" (Ph.D. dissertation, University of California, Berkeley, 1951), p. 77.

[16] Elwood Mead, "Rise and Future of Irrigation in the United States," Department of Agriculture, *Yearbook*, 1899, p. 604.

[17] Act of Oct. 2, 1888, 25 Stat. 527.

banned homestead entries on land that might be suitable for reservoirs or for irrigation once ditches, canals, and diversion dams had been built, and ordered withheld final entries and patents on arid lands. Powell and the Geological Survey, under great pressure from members of Congress who disliked its elaborate mapping procedures, made considerable progress by 1889; some 150 reservoir sites were chosen and 30 million acres of arid lands capable of irrigation were selected for withdrawal. But Powell's careful scientific surveys were altogether too slow for Congressmen from the West who blamed him for the fact that virtually all settlement and land entries had been brought to a halt until the Geological Survey could complete its task and that would take years.

Advocates of western development no matter what the cost joined together to halt the surveys and reopen the lands to entry.[18] In 1890 both Houses got thoroughly tied up in procedural matters over efforts to amend the rider of 1888 by a second rider. After many disagreements the two Houses agreed to a virtual repeal of the 1888 rider except for the reservation of reservoir sites suggested by the Geological Survey, and after safeguarding all rights of persons who had entered desert land between 1888 and 1890. For the future, the amount of land any individual could gain under any and all laws was limited to 320 acres. What is important is the restoration of the withdrawn lands to entry until their reclamation could be planned.[19]

[18] Wallace Stegner, *Beyond the Hundredth Meridian. John Wesley Powell and the Second Opening of the West* (Boston, 1954), p. 313; A. Hunter Dupree, *Science in the Federal Government. A History of Policies and Activities to 1940* (Cambridge, Mass., 1957), pp. 232 ff.; Everett W. Sterling, "The Powell Irrigation Survey, 1888–1893," *Mississippi Valley Historical Review*, XXVII (December 1940), 421–34.

[19] The History of the Sundry Civil Appropriation bill of 1890 may be followed over many pages in the *Cong. Record*, 51st Cong., 1st sess., as aided by the detailed index.

It was in the General Revision Act of March 3, 1891, that Congress tried to write into law requirements that might minimize thereafter the misuse to which the Desert Land Act of 1877 had been put. Other parts of the revision, providing for the repeal of the Timber Culture and Preemption Acts, received more attention from Congress and there is little helpful discussion about the arid lands in the debates. Persons filing entries were, after 1891, required to show their plans for irrigating the land, including the canals and ditches projected and the source of water; they were required to expend $1 per acre in each of the first 3 years upon construction of irrigation works and on leveling the land; they were permitted to associate together in planning the construction but must affirm that they were not making the entries for others, corporate or individual; the acreage that could be entered was reduced from 640 to 320; entrymen were required to be residents of the state in which they were filing; they were allowed 4 years in which to prove up and pay their dollar an acre but might complete their obligations and take title earlier. Finally, the measure was extended to apply to Colorado.[20]

The Desert Land Act was of minor importance compared to the various Homestead Acts. Under the latter 1,622,107 persons gained ownership of 270,216,874 acres; the number of original entries and the acreage entered would be almost twice as much. Under the Desert Land Act 164,756 people filed entries for 33,960,929 acres and 57,259 of these entries for 10,601,334 acres were carried to patent. Both homestead and desert land entries have continued to be made, as shown by the fact that in 1966, 249 final homestead entries and 178 final desert land entries were approved. Only 34 percent of the desert land entries were carried to patent. But to the western states with semi-

[20] 26 Stat. 1096–97.

DESERT LAND ENTRIES FOR SELECTED YEARS

Year	Original		Final		
	Number	Acres	Number	Acres	
1877	731	269,307	----------	----------	
1880	538	155,639	----------	----------	
1885	2,766	928,250	475	190,984	
1890	1,594	478,848	868	244,534	
1895	1,759	230,816	388	77,376	
1900	3,479	590,155	912	138,452	
1905	4,067	711,124	1,293	225,623	
1908	8,965	1,563,027	2,242	369,770	
	83,899	17,662,036	28,587	4,869,368	—Totals through 1908
1910	15,620	2,899,730	2,041	324,246	
1915	2,681	460,023	2,327	386,742	
1916	1,041	174,695	1,876	297,591	
	150,785	31,398,465	39,628	7,503,547	—Totals through 1916
1966	133	37,787	178	42,847	
	164,756	33,960,929	57,259	10,601,334	—Totals through 1966

Compiled from GLO *Reports*.

arid lands the act was of great importance, though not as beneficial as the Newlands Reclamation Act of 1902. The states in which the desert land entries were principally made were Montana, California, Wyoming, Colorado, Idaho, and New Mexico. In two states desert land entries far exceeded the homestead entries for a number of years. Thus in Wyoming between 1878 and 1888 inclusive, the desert land entries amounted to 1,592,295 acres while the homestead entries were 287,701 acres; in Arizona the desert land entries for 1878 to 1893 were 899,129 acres as compared with 433,665 acres in homestead entries. The number of desert land entries reached their high point in 1910 when 15,620 were filed for a total of 2,899,730 acres. Long before that date Congress was moving in other directions to facilitate the development of the arid lands.[21]

[21] John T. Ganoe has two articles on the Desert Land Act in *Agricultural History*, XI (April and October, 1937), pp. 142–57 and 266–77, entitled "The Desert Land Act in Operation," and "The Desert Land Act since 1891."

Early Studies of Irrigability

The anxiety of westerners to secure ownership of as large a quantity of land as possible without regard to their ability to make effective use of it, and the resulting accumulation of underdeveloped land in private ownership, proved a major deterrent to the progress of reclamation after 1902. The reservation authority given in the Act of 1888 came too late to retain in public ownership much of the land most suitable for public irrigation projects. There were many places in the West where irrigation of desert lands was achieved, or at least tried, without great expense by groups of landowners working together. Sometimes they formed an irrigation district or simply organized as a company to which the members subscribed capital in proportion to the amount of land to be benefited. Such groups generally controlled, or quickly acquired ownership of, the land best suited for irrigation and they managed to get control of sites for small reservoirs and for the essential canals and ditches.

Not only in Utah but in California, Colorado, Idaho, and elsewhere many small irrigation enterprises were begun before 1890, and water companies anxious to sell or lease their water came into existence. Though the record of these enterprises was not one of continued or outstanding success in terms of ability to meet their obligations, they were making possible farm development, providing tracts for incoming immigrants, and contributing to the growth of numerous western communities.

In furtherance of these objectives, Senator Preston B. Plumb on August 4, 1886, introduced a resolution calling upon the Secretary of Agriculture to furnish whatever information he had on irrigation.[22] Richard J. Hinton, who is said to have been an engineer in the Geological Survey but was at the time assigned to the Department of Agriculture, submitted a detailed examination of irrigation projects in the United States that gives much information concerning the numerous projects real estate dealers were promoting to colonize land they planned to irrigate. Among the dozens of such colonies perhaps the best known were the famous Greeley Colony in East Colorado, and the Ontario, San Bernardino, Pasadena, and Anaheim Colonies in California. Water from the Salt and Gila Rivers in Arizona, the Carson and Humboldt in Nevada, the Gunnison and Uncompahgre in Colorado, the Kern, the Santa Ana, the San Joaquin, Fresno, and Chowchilla Rivers in California was being used to irrigate several hundred thousand acres. Included in the report was a list of canal, irrigation, and water companies, especially those in Kern County, California, where Haggin and Carr had very extensive irrigation operations that made possible cultivation of thousands of acres of rich land. Hinton made no critical examination of irrigation, no analysis of profits and losses, provided no statistics of production.[23] Congress found his report much more optimistic about the possibilities for irrigation than the Report of the Special Committee of the United States Senate on the Irrigation and Reclamation of Arid Lands, which was made the same year. As a result, it voted the Department of Agriculture $60,000 for a further study of irrigation by Hinton, particularly with reference to the proper location of artesian wells in the region west of the 97th meridian and east of the Rockies.[24]

The officials of the Department of Agriculture disregarded the geographical limitation placed in the two appropriations measures, preferring to extend their survey again over all the arid states, giving attention to California, Nevada, and Idaho, as well as to Colorado and, indeed, Australia.

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[22] *Senate Journal*, 49th Cong., 1st sess. (Serial No. 2332), Aug. 4, 1886, p. 1274.

[23] Richard J. Hinton, "Irrigation in the United States. Its Extent and Methods, With Digest of Laws Governing Water Supply," *S. Misc. Doc.*, 49th Cong., 2d sess., Vol. 1, No. 15 (Serial No. 2450), 240 pp.

[24] Acts of April 4, and Aug. 30, 1890, 26 Stat. 42, 526. The Senate Committee under William M. Stewart of Nevada toured throughout the arid states taking testimony to fill 1,865 pages, asking leading questions and continually seeking evidence or opinions favorable to irrigation. The majority report took Major Powell to task for diverting funds designed for the Irrigation Survey the Senate had authorized to the topographical survey of the arid lands which Powell contended was essential as background for the irrigation survey. The Democratic minority upheld Powell, as did Secretary of the Interior John W. Noble.

Stanley Roland Davison is critical of the efforts of this committee to make the strongest possible case for irrigation, its neglect of any unfavorable evidence, its disagreement with Powell over the extent of land that could be irrigated with the available sources of water. "The Leadership of the Reclamation Movement," Chap. 5, "Senator Stewart's Committee on Irrigation." "Report of the Special Committee of the United States Senate on the Irrigation and Reclamation of Arid Lands," *Senate Reports*, 51st Cong., 1st sess., Vol. 5, No. 928, Parts 1–3 (Serial No. 2707) and Vol. 6, No. 928, Parts 4–6 (Serial No. 2708). In addition to the testimony and accompanying documents both the majority and the minority reports are published *in extenso*.

Furthermore, Hinton, the Department's specialist on irrigation, estimated the area reclaimable by irrigation at 245 million acres "provided that water can be obtained for that purpose." Hinton admitted, however, that known water resources were only sufficient to irrigate 147 million acres. He had great faith in flowing underground streams and artesian wells to tap them and had no fear of such a thing as lowering the water table. He estimated the average capital cost of irrigating this huge acreage at $7 an acre, or somewhat over a billion dollars, and predicted that the average value of the land irrigated would be $30.

Later, when Hinton was no longer an employee of the Department of Agriculture, he published an article in the widely read *Arena* in which he reduced his estimate of the amount of arid land that could be irrigated to 121 million acres, including the 21 million acres he claimed were "under works designed to store and distribute water in irrigation," but went on in his enthusiasm or ignorance to speak of the "millions of tons of fertilizing material" that would be conveyed to thirsty soils. Here he was probably borrowing from Powell who, in his *Report on the Lands of the Arid Region* spoke of "the water coming down from the mountains and plateaus freighted with fertilizing material derived from the decaying vegetation and soils of the upper regions, which are spread by the flowing waters over the cultivated lands. It is probable that the benefits derived from this source alone will be full compensation for the cost of the process [of building irrigation projects]." As an advocate of the faddist notion that the creation of reservoirs would change the climate, Hinton predicted that the increase in rainfall would provide sufficient water to irrigate an additional 54 million acres. He then entered into a confused statement of the quantities of public and private lands in the arid region that were then open to settlement or might become so, including 540 million acres of United States land, 80 million acres of Texas public lands, 75 million acres of railroad lands, and 120 million acres of Indian lands and Spanish grants, making a total of 815 million. All this was designed to show the possibilities in the future development of agriculture which, if properly followed through, might both vastly increase the Nation's wealth and, if equitably distributed, end poverty. Hinton did not favor a transfer of the public lands to the states and showed that such a policy would not contribute to effective use of the water of western streams for irrigation.[25] He had long been a propagandist for irrigation, but now, unhampered by government connections, he could trumpet forth his views even more effectively in company with other extremists who visioned a development of the arid lands not unlike that which had occurred in the more promising areas of the Middle West a generation earlier.[26]

Major John W. Powell who had first brought dramatically to the attention of the American people the possibilities of irrigating the arid lands in his famous *Report on the Lands of the Arid Region,* completed in 1878, was not to be outdone by Hinton. Congress had criticized Powell and his staff for their slowness in surveying reservoir sites and had also blamed Powell for the virtual suspension of land entries. Possibly because he felt the need to rehabilitate himself, Powell wrote an article which appeared in the March 1890, issue of *Century Magazine,* on "The Irrigable

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[25] Richard J. Hinton, "A Continental Issue," *The Arena,* VIII (October 1893), 618–29.

[26] Even after he was no longer employed by the Department of Agriculture Hinton continued to be highly critical of the Geological Survey for its wasteful expenditure of the $350,000 voted by Congress for surveys of land suitable for irrigation, the reports of which contained a good deal of reprinted matter and compared quite unfavorably with the much more substantial work done under his direction for the Department of Agriculture which cost much less. *Science,* XXI (January 6, 1893), 10–11.

Lands of the Arid Region," wherein he said that of the nearly one billion acres of arid lands in the United States "nearly 120,000,000 acres can be irrigated when all such waters are used." Of this large amount he estimated that 100 million could be irrigated at a cost of $10 per acre, including all the construction work involved in building dams, reservoirs, canals and irrigation ditches. Powell was well aware of the many problems that would arise from irrigating lands—problems which its advocates did not face for many years. These included the need for draining irrigated land, the losses of reservoir water from evaporation, the need for many huge and even more small reservoirs, and the desirability of preventing the irrigable land from being monopolized by speculators. All these were ably discussed in the article.[27]

Powell was quoted in Congress on July 26, 1890, as saying that 100 million acres could be irrigated, of which 10 million acres were then being watered and that works were under way to irrigate an additional 2 million acres. On another occasion Powell said that 35 million acres in Montana alone were irrigable but perhaps he did not intend to convey the impression that there was sufficient water available for this land. He thought that half the irrigable land had already passed into private hands, "mainly . . . for speculative purposes, for a rise in the value of the lands." Later, however, he took a more realistic position, reducing the amount of land that could be irrigated with known water sources by nearly two-thirds.[28] To gain a little perspective it should be said that in 1959 after the expenditure of a number of billion dollars by the Bureau of Reclamation and by private individuals and land companies, 25,716,738 irrigated acres were in crops and 5,021,379 acres in pasture. Of this total of 30,738,115 acres, 6,798,751 were in Federal projects.[29]

In his *Century* article Powell had made much of the necessity of completing the topographic survey and the hydrographic survey his bureau was carrying out but had given no indication when they would be completed. No matter how essential these basic investigations were for any program of irrigation development, western promoters were impatient with such scientific work which, they feared, would postpone construction for years. They listened, therefore, more readily to Hinton who argued that such surveys were not needed. In 1893 at the second Irrigation Congress meeting in Los Angeles, Hinton sharply attacked Powell, who had preceded him at the Congress, for warning against the overly optimistic views concerning the amount of water available for irrigation. Powell had retreated into a more cautious mood, discarded his exaggerated statistics of the *Century* article, and shown his grave doubts about the amount of water available for irrigation.[30]

Sufficient interest in irrigation had been aroused by 1890 that the Census Office asked F. H. Newell of the Geological Survey to prepare a census of the number of farms being irrigated, the acreage being watered, the size of irrigated farms, the value of the land as enhanced by the water,

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[27] *Century Magazine*, XXXIX (March 1890), 766–76.

[28] Powell's acceptance for a time of 100 million acres as the quantity that could be irrigated doubtless had a major part in leading the public generally to accept this figure. Davison, "The Leadership of the Reclamation Movement," pp. 114 ff.; *Cong. Record*, 51st Cong., 1st sess., July 26, 1890, p. 7776. Stegner, *John Wesley Powell and the Second Opening of the West*, p. 315. John Noble, Secretary of the Interior in 1891, publicly maintained that 120 million additional desert acres could be irrigated. He was more restrained, however, as to the acreage then irrigated, estimating it at 3 million to 3,500,000 acres.

[29] Secretary of the Interior, *Annual Report, 1960*, p. 53; *United States Census of Agriculture, 1959*, Vol. 3, *Irrigation of Agricultural Lands*, 1961, p. 5.

[30] Davison, "The Leadership of the Reclamation Movement," pp. 151 ff.

and the kinds and value of crops. His figures show how Hinton, Powell, Smythe, and irrigation advocates in Congress had grossly exaggerated the extent to which reclamation of arid lands had gone. For the 11 states of the Interior Basin and the Coast he found 52,504 irrigators and 3,564,416 acres irrigated in 1889, that 68 acres was the average size of irrigated farms, and the average value of the products $14.89 an acres. If to these figures are added the data from the five states of the Great Plains—North and South Dakota, Nebraska, Kansas, and Texas—the total number of irrigators was 54,136, the acreage irrigated 3,631,381, the average size of irrigated farms 67 acres, and the average value of the products of the irrigated land $14.89 an acre. California had one-fourth of the irrigators, nearly one-third of the land irrigated, and the richest yield per acre. Newell was too much of a scientist to put faith in artesian wells or in flowing underground streams. He showed what had long since been learned in California, that one flowing well generally led to additional wells being drilled, which reduced the flow of the first one.

Newell described the haphazard and disjointed development that had characterized most irrigation activity with each individual or small group being solely concerned about its own land. State laws had allowed the creation of irrigation districts with the privilege of bonding themselves for construction funds. Bonds had been sold beyond the limit established by law, planning had been poor, expenditures extravagant, and poor personnel had mismanaged the projects. Newell offered much data showing the amount of water in streams but hesitated to state the relationship between quantities shown and the acreage they could irrigate. He warned that one of the greatest curses of the country was the large number of restless men eager to speculate, constantly on the lookout for opportunities of making money without labor, always ready to take up land under a new enterprise, and to make feeble attempts at farming in the hope of selling out to someone who would really cultivate the soil. Those men were rarely successful farmers being frequently in default on their payments, and their presence served merely to embarrass and retard settlement.[31]

Reclaiming the arid lands of the West by irrigation was becoming a major concern of certain economic groups, including the officials of railroads which had huge land grants, real estate promoters, and the booster element which hoped for a constant growth of population. These same elements continually tried to liberalize Federal land policies to make the acquisition of the public lands easier. Now, with the best of the lands, even the best of the arid lands, in private hands they were anxious to get aid in developing irrigation projects. There is little evidence that the Desert Land Act had achieved much beyond facilitating the transfer of public land to livestockmen, and to speculators who hoped to profit when irrigation districts were developed at public expense. Some leaders were convinced that if the remaining public lands were conveyed to the states the latter would be able to raise the necessary funds with which to build the larger works necessary to irrigate them. Harking back to the earlier efforts of the West to have the public lands ceded to the states in which they were located, they now began a new drive in behalf of cession.[32]

Move for Cession to States

At the Irrigation Congress, held in Salt Lake City in 1891, representatives of land grant railroads, other real estate groups, state land commissioners and land boards,

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[31] *Report on Agriculture by Irrigation in the Western Part of the United States at the Eleventh Census, 1890* (Washington, 1894), pp. vii, 285.

[32] Davison, "The Leadership of the Reclamation Movement," p. 192.

irrigation companies, lawyers, journalists, civil engineers and businessmen—stockmen and farmers were noticeably absent—resolutions were adopted urging that the remaining public lands be conveyed to the states to permit them to undertake large and well-planned irrigation projects. Among the principal supporters of the Irrigation Congresses was James J. Hill, president of the Great Northern Railroad, whose line stood to benefit from any irrigation carried out in Montana, Idaho, or Washington. Other railroad officials who took an active part in the Salt Lake City congress were the general land agent of the Central and Southern Pacific Railroad and the land commissioners of the Oregon and California and of the Houston and Texas Railroads.[33] Congress was not ready to convey all the remaining arid lands to the western states but was disposed to make a partial grant to let the states experiment with irrigation.

Senator Joseph M. Carey of Wyoming introduced a measure to provide for a grant of up to a million acres to each of the states containing desert lands to aid in their reclamation. The states were required to file maps showing their plans for irrigation and the sources of water in much the same way that persons entering desert lands were required to do; they were required to sell or otherwise dispose of the land only to actual settlers in tracts no larger than a quarter-section and within 10 years not less than 20 acres of each quarter-section was to be in cultivation. In the discussion on the bill the fear was expressed that if there was any good land susceptible of irrigation left in the possession of the government it would be taken up quickly and would not assure a systematic and well-planned program of irrigation, nor the most effective use of available water resources. Two Congressmen, William P. Hepburn of Iowa and Francis G. Newlands of Nevada, were not at all sure that the states would be able to carry out the very expensive projects being contemplated by some of them and, perhaps reluctantly, expressed their view that only the Federal government could be expected to handle the question in a broad-gauged and constructive way. They were foresighted. Congress accepted the Carey measure which became law on August 18, 1894.[34]

At each of the Irrigation Congresses—Salt Lake City in 1891, Los Angeles in 1893, Denver in 1894—the question of cession of the public lands to the states absorbed much attention. Many staunch advocates of cession believed that the Federal government could never be persuaded to undertake large-scale irrigation work and in any event would have strongly opposed its doing so believing that the matter should be left to the states. In the Carey Act they had won a minor victory but were by no means content. However, for the moment they thought it wise to let the states experiment with the land thus made available to them. At the Denver meeting those present voted overwhelmingly in favor of the repeal of the Desert Land Act, which, in the words of the chairman of the National Committee of the Irrigation Congress, was an "anomalous statute [that] assumes that a single settler can divert a mighty river and reclaim 320 acres of land."

> It assumes that that large [an] area is necessary for the support of a family. In its practical operation it is the instrument of corporations, and enables them to acquire vast tracts of arid land for a nominal price and to put it on the market on their own terms. It breeds perjury, fraud and speculation.

William E. Smythe conceded that in the past the act had enabled much useful work

[33] *Cong. Record*, 53d Cong., 2d sess., Aug. 11, 1894, pp. 8422–23; Davison, "The Leadership of the Reclamation Movement," p. 221.

[34] *Cong. Record*, 53d Cong., 2d sess., Aug. 11, 1894, pp. 8422–23; 28 Stat. 422.

to be done but now was doing nothing but harm and:

> it is of the highest importance that it should be repealed before all the valuable public lands have been wrested from the hands of the people.
>
> Selfish land-grabbers . . . pay the government $1.25 per acre, then water the lands and sell them to the public at a very large profit. It is a grotesque system which robs the people of their patrimony and then allows them to buy it back again upon the robbers' own terms.

Smythe declared that the cost of getting water to the land had averaged $8.15 per acre, while the land was being sold at $20 to $100 an acre. In the light of the demand of the Irrigation Congress for the repeal of the Desert Land Act and of the recognized power of its leaders, it is difficult to understand why Congress was so loath to enact a repeal measure.[35]

Although the tide of opinion seemed to be favoring Federal development of irrigation projects because of the financial weakness of the western states and the fact that the rivers were mostly interstate, advocates of state leadership were not ready to yield. In 1896 the American Society of Irrigation Engineers presented to Congress resolutions adopted at their annual meeting in Denver, urging the "application of the doctrine of home rule to the irrigation development of the Western States . . . the proper agencies to supervise such development and the best custodians of their natural resources. . . ." The Society urged that the Federal government transfer the public lands to the states "under such conditions as shall secure the irrigable lands to actual settlers only, and shall withhold from private ownership the other lands now public, and that the revenue derived therefrom shall be applied to the development of our natural resources. . . ." Here was a suggestion that the nonirrigable lands, i.e., mineral and forest lands, be retained in public ownership and the income from them be used for irrigation works. This was the plan later incorporated in the Newlands Act of 1902, save that the management of all lands and irrigation projects was to be kept in the hands of the Federal government.

The principal speaker at the Denver meeting was Elwood Mead, a well-known and respected reclamation engineer who will come into this account in numerous places. Mead declared that land and water rights must be held by the same government to make irrigation possible and since the states controlled the water rights they should also now be given control of the land within their boundaries. Federal law, including the Desert Land Act and the Homestead Act, was ruining the West by permitting individuals to gain ownership of land needed for collective action in irrigation development. But anyone who attempts:

> to secure a reform in our land system must abandon all hope of preferment here or hereafter. The influence of those interested in maintaining the free grazing privilege, the effect of prejudice is so potent, that a candid statement of existing conditions is seldom attempted. In many sections of the West, to advocate land reform is to be regarded as a subject for the jail. So long as this is true, the fact that irrigable land without water is only fit for a grave and that the present homestead law has been the cemetery of the ditch builders' investment will not be potent enough to overcome the fear of the demagogical cry of 'land grabber,' which meets every suggestion of a reform.

One may well understand from this rhetorical flourish why Mead became the principal and highly successful lobbyist of the irrigation engineers and the advocate at a later time of lavish support for reclamation programs, not by the states, however, but by the Federal government.

For their proposal to donate all public lands to the states Mead, Smythe, and the engineers assembled support from land

[35] William E. Smythe, "The Progress of Irrigation Thought in the West," *Review of Reviews*, X (October 1894), 399; id., "The Irrigation Idea and its Coming Congress," *Review of Reviews*, VIII (October 1893), 405.

commissioners and presidents of western railroads and even persuaded the acting head of the General Land Office under Cleveland, E. T. Best, to favor cession of all public lands, including the forest reserves.[36] He also favored the sale or leasing of the grazing lands to provide revenue for irrigation development.[37]

Congress continued to make appropriations to the Department of Agriculture for experiments in inducing rainfall and for collecting information on irrigation.[38] There was set up in the Department an Office of Irrigation Investigations of which Elwood Mead took charge in 1899. Mead was then writing sober accounts of the "Rise and Future of Irrigation in the United States."[39] Under his direction the office developed a corps of irrigation and drainage engineers (13 in 1905) who provided carefully prepared reports of the progress being made and the potential for future irrigation development.[40] By 1902 Mead had built up in the Department of Agriculture a staff of 46 who were well prepared to assist in planning any reclamation program Congress might adopt. Under normal conditions the Office of Irrigation Investigations as it had now become might be expected to be consulted both by Congress and those in whose hands any such program should be placed.[41]

Eleven years of agitation for government aid to bring the arid lands of the West into cultivation by the Irrigation Congresses, the National Irrigation Association which had been supported by contributions of $125,000 by five western railroads under the leadership of James J. Hill of the Great Northern, and other western real estate and business interests were approaching success.[42] They were aided by the exaggerated claims made of the great potential acreage which could be irrigated and carved into farms. Both national political parties took up the issue. Earlier demands for the cession of the public lands to the states had died down somewhat as it became apparent that no state had the credit to develop its arid lands. This was obvious from the fact that 8 years after the Carey Act became law and its requirements successively relaxed a mere 11,321 acres had been patented and only 669,476 acres, selected by four of the 10 eligible states, had been approved. Three states had made no progress toward having lands segregated for their selection. At this rate it would have taken 150 years for the states fully to utilize the limited opportunity Congress gave them to obtain

[36] The Burlington and the Denver and Rio Grande Railroads were most prominently associated with this movement to aid irrigation by having the public lands ceded to the states. Richard C. Overton, America's leading railroad historian, who has done so much to make known the leading role the Chicago Burlington and Quincy Railroad exerted in good railroad management, has no index reference to either irrigation or reclamation in his *Burlington West. A Colonization History of the Burlington Railroad* (Cambridge, Mass., 1941), or in *Burlington Route. A History of the Burlington Lines* (New York, 1965). For the Mead paper and letters of Best, Smythe, Wm. Pearce, B. A. McAllister, Wm. J. Palmer, and G. W. Holdrege see *S. Doc.*, 55th Cong., 1st sess., Vol. 5, No. 130 (Serial No. 3562), pp. 7–37.

[37] Just at the time Best advocated cession of the public lands to the states, which he felt could better manage them, the National Forest Commission, for which President Cleveland had asked, was recommending the expansion of the national forest reserves.

[38] Appropriations were $10,000 in 1892, $6,000 in 1893 and in 1894, $15,000 in 1895, $10,000 in 1898, $35,000 in 1899, and $65,000 in 1902 and 1903.

[39] Department of Agriculture, *Yearbook*, 1899, pp. 591–612. Paul K. Conkin, "The Vision of Elwood Mead," *Agricultural History*, XXXIV (April 1960), 88–97. Under Mead in the same office was Ray P. Teele who was later to become a principal critic of the Federal reclamation policy.

[40] Mead remained in the office at least until 1907.

[41] *Official Register of the United States*, 1903, Vol. 1, pp. 1108–1109.

[42] For the National Irrigation Congresses see William E. Smythe, *The Conquest of Arid America* (New Yor, 1905), and the *Irrigattion Age, 1891–1918;* Mary Wilma M. Hargreaves, *Dry Farming in the Northern Great Plains 1900–1925* (Cambridge, Mass., 1957), pp. 68, 136.

irrigable public land.[43] Private capital had taken up and improved the most likely projects which did not require too large an investment and promised quick return in water rents or in accelerating land prices. If there was anything to the view of Senator William M. Stewart that from 75 million to 100 million acres of arid lands were capable of being irrigated, only 7,200,000 had been provided with water by 1899 and of this only 5,200,000 acres were in hay, forage, grain, or fruit crops.[44] The semiarid West had a long way to go to realize its optimistic dreams of extensive agricultural development.

Private Irrigation Efforts

Most private irrigation projects early fell into difficulties. Many had been planned, engineered and promoted by incompetent or speculatively inclined persons having insufficient capital to carry them to completion. Construction of dams, reservoirs, and ditches was not up to the best standards of the time, water resources had been badly misjudged, and available water and land had not been fully utilized. Owing to the lack of advance studies, the need for providing drainage, preventing alkali deposits from accumulating, and the importance of marketing facilities had not been foreseen. Settlers with no experience in irrigation farming frequently proved unadaptable to the new tasks before them. Ninety percent of the private irrigation companies were in or near bankruptcy by 1902.[45] The role of the private irrigation companies in the development of the West was not over but it was becoming difficult for them to raise capital. The West was coming to realize that its earlier optimistic estimate of the amount of land capable of being irrigated could not be attained without government aid, that is, Federal aid. As a result, westerners—or at least some—swallowed their prejudices in behalf of state ownership and opposition to Federal development of the arid lands waned.

If the public lands were not to be ceded to the states, could not the income from them be used to build the high dams and the long canals and purchase necessary sites that had been permitted to fall into private hands? Friends of agriculture had already pointed the way in the Hatch Act of 1887 and the Second Morrill Act of 1890 whereby Congress, instead of giving the states and territories an additional grant of

[43] Secretary of the Interior, *Annual Report, 1902*, H. Doc., 57th Cong., 2d sess., vol. 18, No. 5 (serial No. 4457). p. 482. The progress the states made in applying for land under the Carey Act, having it segregated, and securing patents by 1958 was little more promising.

State	*Area applied for*	*Area segregated*	*Area patented*
Oregon	791,615	388,876	73,442
Washington	155,649	----------	----------
Arizona	31,266	13,745	----------
Idaho	3,819,181	1,335,787	617,334
Nevada	185,455	36,808	1,578
Utah	606,704	141,814	37,239
Colorado	461,707	284,653	37,706
Montana	609,826	246,698	92,280
New Mexico	10,204	7,604	4,743
Wyoming	1,796,274	1,396,869	203,311
Totals	8,467,834	3,852,860	1,067,635

Table 28 in *Statistical Appendix to the Annual Report of the Director of the Bureau of Land Management*, 1958.

[44] The earlier absurd figures of potentially reclaimable land offered by Hinton were less talked about in 1902 but Stewart and Representative W. L. Jones of Washington still mentioned 100 million as their upper figure; C. D. Clark, Senator from Wyoming mentioned from 30 million to 60 million acres. *Cong. Record*, 57th Cong., 1st sess., pp. 2220, 2277, 6753.

[45] Henry W. Palmer, Pennsylvania Representative, mentioned the high rate of failure on Jan. 21, 1902, *Cong. Globe*, 57th Cong., 1st sess., p. 841. The factors contributing to failure are summarized in Ray Palmer Teele, *Irrigation in the United States, a Discussion of its Legal, Economic and Financial Aspects* (New York, 1915), pp. 133–34.

land to subsidize agricultural experiment stations and provide further endowment for the agricultural colleges, authorized the appropriation of $15,000 "arising from the sale of public lands" for each of these purposes to each state and territory.[46]

If Congress could do this—and the amount granted for these purposes was ultimately increased to $25,000 annually—why could it not place most or all of the balance of the proceeds of the public lands in a revolving fund for the construction of reclamation projects? The keenest opposition to this proposal, which became part of the Newlands bill of 1902, came from the people who were closest to the A & M institutions. They feared that it was the intention of Newlands and others associated with him to make the entire fund, minus the 3 or 5 percent of the net proceeds which had annually been paid each state since its admission, tributary to the reclamation fund, and thereby jeopardize the A & M appropriation.

Roosevelt Invigorates Federal Program

Theodore Roosevelt's assumption of the Presidency, following the death of William McKinley, brought to the White House a strong advocate of reclamation and conservation. In his State of the Union message of December 3, 1901, President Roosevelt laid the basis for a Federal reclamation policy.

> Great storage works are necessary to equalize the flow of streams and to save the flood waters. Their construction has been conclusively shown to be an undertaking too vast for private effort. Nor can it be best accomplished by the individual States acting alone. Far-reaching interstate problems are involved; and the resources of single States would often be inadequate. It is properly a national function, at least in some of its features. . . .
>
> The Government should construct and maintain these reservoirs, as it does other public works. . . .
>
> These irrigation works should be built by the National Government. The lands reclaimed by them should be reserved by the Government for actual settlers, and the cost of construction should so far as possible be repaid by the land reclaimed. The distribution of the water, the division of the streams among irrigators, should be left to the settlers themselves in conformity with State laws, and without interference with those laws or vested rights. . . .
>
> No reservoir or canal should ever be built to satisfy selfish personal or local interests; but only in accordance with the advice of trained experts, after long investigation. . . .
>
> With a few creditable exceptions, the arid States have failed to provide for certain and just division of streams in times of scarcity. Lax and uncertain laws have made it possible to establish rights to water in excess of actual uses or necessities, and many streams have already passed into private ownership, or a control equivalent to ownership.
>
> In the arid States the only right to water which should be recognized is that of use. In irrigation this right should attach to the land reclaimed and be inseparable therefrom.[47]

Western Representatives in Congress and western people generally must have felt a great thrill on hearing a President talk with such profound understanding of and sympathy for the needs of their section.

Congress had already moved to put the government behind reclamation, but Roosevelt's challenging and authoritative words brought to the movement widespread support. By July 1, 1902, Senator William M. Stewart of Nevada could report to the Senate that on the roster of supporting organizations were the United Mine Workers, the Chicago Federation of Labor, the National Board of Trade, the National Association of Manufacturers, the Commercial Club of St. Paul, and other trade organizations and labor unions.[48] Newspaper support for Federal reclamation projects became nationwide. Opposition, which proved ineffective, came from

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[46] Acts of March 2, 1887 and Aug. 30, 1890, 24 Stat. 440 and 26 Stat. 417.

[47] Richardson, *Messages and Papers of the Presidents*, XV, 6656–58.

[48] *S. Doc.*, 57th Cong., 1st sess., Vol. 30, No. 446, (serial No. 4249), pp. 16–17.

conservative states' righters, and representatives from the older states, who wanted the income from the public lands to benefit all the states rather than one section of the country, and from farming interests in the older states which feared the competition of millions of acres of additional and highly productive irrigated lands. Some farseeing individuals predicted that once this system of subsidized farming was inaugurated, it would have no end and would lead to more and more marginal, costly, and unprofitable projects being undertaken, but they were voices crying in the wilderness.

Francis G. Newlands of Reno, Nevada, was the House leader of western forces working to push the Federal government into sponsoring and financing reclamation projects. Early in 1901 he tried to amend the usual rivers and harbors bill to provide for the construction of reservoirs on the Humboldt River in his state to save the spring floodwaters for irrigation. He also led the move to create reservoirs on the headwaters of the Missouri and to provide larger sums for investigating the possibilities of irrigating the arid lands. In all of these efforts he was unsuccessful but he effectively drew the attention of the House to the irrigation question and laid the basis for favorable action nearly a year and a half later. Newlands already had drafted a bill providing that the proceeds from land sales in the arid states be used to build irrigation projects in those states. When opponents of Federal participation in irrigation asked why he did not favor the cession of the public lands to the states to permit them to carry out such work instead of advocating Federal construction, Newlands pointed out that state leadership would lead to jurisdictional disputes since most rivers were interstate, citing as an example the Truckee River and its headwaters. Furthermore, the states lacked the credit to do the task and if the lands were ceded to them "the trust will be improvidently exercised by the State." The land would fall to "the monopolistic holdings" already too large. Newlands might have answered a query of a Hoosier Congressman who wanted to know whether he would favor using the same Federal funds to drain wet lands useless without drainage, by reminding him that those same wet lands had been given Indiana, Illinois, Michigan, and Wisconsin in 1850 to aid in their drainage but that, instead, the states had permitted them to become "monopolistic holdings."

Newlands felt that Nevada suffered an indignity in having such a large proportion of its lands held by the central government but he was aware that the state could not develop them as the Federal government could. He was particularly anxious that the public lands should not be permitted to fall into the hands of speculators and other nonsettlers. "We have suffered . . . from the monopoly of the lands," he declared. "There is not a man in California who does not know how the ownership of those large tracts [Mexican land grants of 50,000 to 100,000 acres] has steadily retarded the progress and development of the State."[49] At the outset he felt that 80 acres of irrigable land was all that should be permitted entrymen and he was anxious to withhold all irrigable lands for homesteads. He thought of the low elevation arid lands, to which water could be brought through government irrigation works, as offering homes to thousands of landless people as the homestead law had done earlier. "The aim . . . is to prevent monopoly of every form, to open up the public domain to actual settlers who desire homes, and to disintegrate the monopolistic holdings of land that prevail on the Pacific

[49] *Cong. Record*, 56th Cong., 2d sess., Jan. 30, 1901, p. 1701; 57th Cong., 1st sess., Jan. 21, 1902, p. 841.

coast and in the intermountain region." Government construction of irrigation works with an 80-acre maximum on irrigation homesteads and the excess-lands feature appearing in his measure of 1902 (it may also have been in the bill of 1901) might help "to disintegrate the monopolistic holdings. . . ."[50]

Supporters of the Newlands bill with all its possibilities for the economic development of the 11 western states had an easy time putting it through Congress in 1902. No long and bitter battle such as had preceded the adoption of the Preemption and Homestead Acts proved necessary. Some opponents had exhausted themselves in the previous Congress, but a more important factor was the report by Frank W. Mondell of Wyoming, who had been Assistant Commissioner of the General Land Office under President McKinley. His report was more restrained concerning the amount of land that could be irrigated than some of the earlier reports. In one place Mondell mentioned from 35 million to 70 million acres and in another, quoted the director of the Geological Survey as maintaining that in 38 years the government could aid in irrigating 20 million acres and private capital could irrigate 40 million acres. Mondell showed the impossibility of the states undertaking any extensive irrigation program, emphasized that the Federal program would be self-liquidating and that costs would come from income from the lands, not as appropriations from the Treasury, argued that expansion of the area in cultivation would do no more harm than had the agricultural development of the Great Plains but would materially aid the national growth, and he upheld the constitutionality of the measure.[51]

One opposition argument that was advanced with considerable foresight was that in developing great reclamation projects and placing homesteaders on the irrigated land, for which they would have to make payments over many years, Congress would be creating a class of debtors and would be subject to a constant clamor from them for relief as it had been before 1820 when public land was sold on credit.[52] W. P. Hepburn of Iowa called the measure "the most insolent and impudent larceny that I have ever seen embodied in a legislative proposition involving filching from the common fund," a "give away of an empire. . . ." Other Representatives of New York, Pennsylvania, and Iowa fulminated against it but to little avail. Americans had heard and read so much about the new frontier of opportunity that reclamation of the arid lands was expected to open up that they wanted no delay and brooked no opposition. The measure passed the House by an overwhelming vote of 146-55 with generous support from all sections, although eastern and middle western Republicans cast 41 negative votes. There was no division in the Senate.[53]

Reclamation Act of 1902

The Newlands bill deserves to rank with the Homestead Act of 1862 with which it was frequently compared, as one of the most significant measures in shaping the development of the West.[54] As adopted,

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[50] *Cong. Record*, 56th Cong., 2d sess., Jan. 9, 15, 30, 1901, pp. 784, 1056, 1701; 57th Cong., 1st sess., App., pp. 253–65.

[51] *House Reports*, 57th Cong., 1st sess., Vol. 6, No. 1468 (Serial No. 4404), pp. 1–17.

[52] *Ibid.*, pp. 14–15. Gilbert M. Tucker (ed.), *Country Gentleman*, expressed his fear of irrigation development once the government decided to subsidize it in *Irrigation Schemes of the West* (Albany, 1901), which originally appeared in the *Annual Report* of the New York State Agricultural Society for 1900.

[53] *Cong. Record*, 57th Cong., 1st sess., June 13, 1902, pp. 6742, 6762, 6778; *House Reports*, 57th Cong., 1st sess., Vol. 6, No. 1468 (Serial No. 4404), pp. 14–15.

[54] Arthur B. Darling, *The Public Papers of Francis G. Newlands* (2 vols., Boston, 1932), *passim*.

Section 1 provided that all money from the sale and disposal of the public lands in those 16 western states which had more or less arid or semi-arid land (except for the 5 percent that went to the states of origin) was to be credited to a Reclamation Fund which was to be used for the planning, construction, and maintenance of dams and other irrigation works.[55] Since this section was to apply to income from lands for the fiscal year 1900-1901 there was already a tidy sum of $3,144,821 available when the bill became law and $4,585,520 more by June 30, 1902. Section 2 authorized the Secretary of the Interior to construct such projects as the funds permitted. Section 3 authorized the Secretary to withdraw from entry lands needed for such projects and lands susceptible of irrigation. The latter were thereafter to be subject to entry only under the homestead law and no commutation was to be allowed. Section 4 declared that the users of water, whether on public (homestead) or private land, were to pay for the water sufficient to return the cost of constructing the dams, ditches, and other works. Nothing was said about interest, however, and never was a cent of money to be required for interest except on delayed payments. On all construction 8 hours was to constitute the workday; no Mongolian labor was to be employed. Entrymen were required by Section 5 to reclaim at least one half of the irrigable land within their claim and to pay the charges for the water they used before patents would issue to them.

The Secretary was authorized by Section 6 to use the Reclamation Fund for the operation and maintenance of reservoirs and other works until their cost had been paid by the users of the water, when management and operation should pass to the owners of the irrigated land. Section 7 gave the Secretary the right of eminent domain. Section 8 declared that state laws governing the control, appropriation, use, and distribution of water should prevail and vested rights were not to be affected. This section was strongly criticized by opponents because it repudiated Roosevelt's strictures on the water policies of most western states, leaving them as they were. Section 9 stated that so far as was practicable "the major portion of the funds" arising from the sale of lands in any state should be expended on projects in that state, although considerable leeway was allowed the Secretary.[56] This was interpreted to mean that 51 percent of the proceeds from sales in any state should be expended in that state, the other 49 percent being subject to general allocation.

Though the Newlands Act did not end the revenue concept in public land policy (in fact it even extended it), it did mark the beginning of a new era in which the government was to play the role of the planner and entrepreneur for reclamation projects in order to bring water to public land for the benefit of homesteaders and to privately owned land, subject to the same water fees paid on public land.

The measure did not discriminate between the owners of private land and those homesteading on public lands but did require that:

> No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual

[55] A proviso in the Newlands Act stated that if the income from land sales in the other 13 public land states was not sufficient to cover the $25,000 to be paid to each state and territory under the Second Morrill Act the deficit was to be taken from general Treasury funds. By 1902 the appropriation for the state experiment stations under the Hatch Act had been changed to come out of the general funds, not the income from public lands.

[56] Reclamation Service, *Fifth Annual Report*, 1906, p. 41.

bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no right shall permanently attach until all payments thereof are made.[57]

This is the famous land limitation section which, with later amendments, was planned to reassure critics of the measure who maintained that the benefits of the great irrigation works constructed at public expense would largely fall to the land grant railroads and speculators who had acquired before 1902 much of the best land suitable for irrigation. More important, it was included by those who believed that "agriculture was a way of life" and who with Jefferson, Greeley, Lincoln, and Liberty Hyde Bailey wanted to assure the division of arable public lands into single family farms, owner operated. The framers of the Newlands Act thought of it as a continuation of a long line of measures, all devised to bring about the establishment on the public lands of sturdy yeomanry, no matter how hard the struggle of farm making on the frontier. By denying water to owners of excess land within projects it was expected that all such owners would be compelled to sell their surplus holdings, presumably at prices not too difficult for homesteaders to pay. The framers of the Newlands Act were especially anxious to convey the impression that it was in the tradition and a continuation of the Homestead Act which had aided 600,000 people to acquire farms in the more humid regions of the West.[58]

Implementation of the Act

The Newlands Act required for its implementation the best information the Geological Survey had been gathering about rainfall, the flow of water in streams to be harnessed, the nature of the stream bed in which dams were to be constructed and the permeability of the soil and rock behind the dams. Also needed was information it had not been gathering concerning the nature of the soil to be reclaimed, whether it would drain properly when irrigated, whether irrigating it would bring up the alkali, whether, in fact, the soil was of such quality as to stand continued cultivation and make possible the payment of the water rents, what crops it could produce, whether there was a demand for such crops, and whether they could be marketed in competition with crops produced in more humid regions where heavy water charges were not required.

At this point there were three departments of the government which could provide a staff of experts to aid in planning a program but no one of the three was quite prepared to undertake it alone. First was the War Department with its Corps of Engineers, organized just a century before, which had been engaged in building levees, bridges, jetties, canals, and other river and harbor improvements and roads and making surveys for other projects.[59]

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[57] Act of June 17, 1902, 32 Stat., Part 1, p. 388. It is useful at this point to see how the Canadians were influenced by irrigation development in the United States and profited from its experience in shaping their own policy: Lawrence B. Lee, "The Canadian–American Irrigation Frontier, 1884–1914," *Agricultural History*, 40 (October 1966), 271–83.

[58] An admirer of the work of the Reclamation Service, George Wharton James in *Reclaiming the Arid West. The Story of the United States Reclamation Service* (New York, 1917), p. 30, said the excess-lands provision was "an effort . . . to take it out of the power of capitalists and speculators in land to take selfish advantage of the beneficent work of a government of democracy designed for the benefit of all citizens. . . ." Mary Montgomery and Marion Clawson in their *History of Legislation and Policy Formation of the Central Valley Project* (Berkeley, 1946), pp. 135 ff., quote passages from Senator Newlands, Judge Raker, and F. H. Newell in which they emphasized that the Newlands Act was to provide farm homesteads for the small man.

[59] Forest G. Hill, *Roads, Rails and Waterways. The Army Engineers and Early Transportation* (Norman, Okla., 1957), pp. 3 ff.; W. Stull Holt, *The Office of the Chief of Engineers of the Army* (Baltimore, 1923), *passim;* Arthur Maas, *Muddy Waters. The Army Engineers and the Nation's Rivers* (Cambridge, Mass., 1951), *passim.*

Second, there was the Department of Agriculture. When Congress was considering the Newlands bill, Elwood Mead, chief of the Office of Irrigation Investigations in this Department had under way studies of the "laws and institutions of the different States relating to the ownership and distribution of the public water supplies and the engineering and agricultural questions connected with the actual use of the water in irrigation." Among the issues being examined were canal management, quantities of water required for various crops and crops on different soils, pumping methods and costs, and engineering questions involved in the draining of irrigated land.[60]

The third department equipped with men technically trained and experienced in the problems of irrigation engineering was the Department of the Interior. Here Frederick H. Newell, head of the Division of Hydrography of the Geological Survey, had his staff making studies of the geology and water resources of various parts of the arid region as well as of other parts of the country. Over the course of years the Geological Survey, the principal scientific agency of the government at the time, had published an amazing number and variety of papers relating to geological problems, many of which were concerned with topography, rock formation, stream flow, the water table and artesian wells in the semi-arid states. Outstanding members of the staff were Charles D. Walcott, a distinguished paleontologist, George Otis Smith, later to be Director, and Charles R. Van Hise, a geologist who became president of the University of Wisconsin in its great day.

Since Congress had placed sole responsibility for the development of irrigation works with the Department of the Interior, it was to be expected that this Department —notwithstanding its unfamiliarity with agriculture, soil science, crops, markets, construction of dams, canals and other water works, and all the engineering involved in such construction—should proceed to develop a bureau that would in all these and many other activities parallel and duplicate functions being performed in the Departments of Agriculture and War. It is not in the nature of bureaucracy to share responsibility where Congress does not require it.

In the discussions leading to the adoption of the Newlands Act it is understandable why its advocates should play down the amount of funds which would be available for projects. Indeed, annual receipts from the public lands (including fees and commissions) had in recent years been quite small, ranging from $2,087,931 in 1897 to $4,056,812 in 1900. It would take many years before reclamation's proportion of these sums would enable substantial projects to be completed. But income from the lands was increasing, reaching $4,307,437 in 1901, $5,880,088 in 1902, and $10,557,618 in 1903. By June 30, 1902, or shortly thereafter, there was available for reclamation projects $7,729,341 and a year later the accumulated total had grown to $16,191,836.[61] Since these funds were to be expended on projects in 16 states, somewhat in proportion to the income from land sales within them, the share of no single state could be very large, but large projects could be undertaken whose construction and hence whose costs could be spread over a number of years. The credits accumulated of the 16 states for reclamation projects are given in the table that follows.

A notable feature of the Newlands Act was that it did not prescribe what projects should be undertaken first but left their

[60] Department of Agriculture, *Yearbook*, 1902, pp. 735–36.

[61] Secretary of the Interior, *Annual Report, 1903*, p. 295.

AMOUNTS CREDITED TO RECLAMATION FUND FROM SALES, FEES, AND COMMISSIONS[a]

	To 1903
Arizona	$125,605
California	1,287,119
Colorado	1,139,067
Idaho	1,149,667
Kansas	67,553
Montana	1,324,546
Nebraska	354,036
Nevada	35,879
New Mexico	297,365
North Dakota	2,456,340
Oklahoma	1,824,881
Oregon	2,795,690
South Dakota	546,982
Utah	234,344
Washington	1,894,069
Wyoming	658,686

[a] Secretary of the Interior, *Annual Report, 1903*, p. 295.

selection and initiation to the Secreary of the Interior, an extraordinary power that Congress was later to regret. With a number of million dollars available, there was bound to be a scramble to have projects adopted in states where the largest income for the fund was being produced and in states which had effective lobbyists. It was important, therefore, that early action be taken to place responsibility for the program in firm hands familiar with all that had developed during the past decade concerning the movement for reclamation and at the same time skilled in water and engineering problems. For the moment, at least, the Geological Survey offered the best refuge for the program for, though this Bureau had shown its political adaptability, it was staffed with experts. Frederick H. Newell, chief hydrographer, was placed in charge of getting the program under way in what was an adjunct of the Geological Survey and which soon became a separate bureau, the Reclamation Service.

In carrying out the reclamation program the first task was to investigate what projects had already been built or were under way and second, to investigate the feasibility and cost of future government projects, always bearing in mind the necessity of allocating the funds within the requirements established by law and not forgetting political questions. Newell's staff devoted 1902-1903 to preliminary work including mapping, diamond drilling, water measurements, studies of underground water, engineering problems, and the extent of areas capable of irrigation on the Salt and Gila Rivers in Arizona, the Colorado, Owens, and Salinas in California, the Gunnison and South Platte in Colorado, the Snake in Idaho, the Milk in Montana, the North Platte in Nebraska, the Truckee in Nevada, the Pecos in New Mexico, the Yakima in Washington, and the Shoshone in Wyoming.[62]

Already somewhat advanced by private groups, the Salt River and the Truckee River reclamation projects were taken over first. On the Salt River, plans called for the construction of a high dam and many miles of canals and distribution systems, with the object of irrigating 200,000 acres. The Truckee River, which flowed out of Lake Tahoe into sinks in the Nevada desert, could be diverted to the less well endowed Carson River and could irrigate good nonalkali land.

By late 1906 the Reclamation Service had adopted projects in all but one (Oklahoma) of the original 16 states and territories authorized for Federal irrigation development.[63] Included were numerous projects that have since become well known

[62] Geological Survey, *Twenty-Fourth Annual Report*, 1903, pp. 219–35.

[63] Texas was added to the 16 by the Act of Feb. 25, 1905. 33 Stat. 814. The number of adoptions were: 1903—4, 1904—7, 1905—9, 1906—3, 1907—1. Dorothy Lampen, *Economic and Social Aspects of Federal Reclamation* (Baltimore, 1930), p. 53.

for their size and the almost startling effect they have had upon the growth of the states: Salt River and Roosevelt Dam in Arizona, Uncompahgre in Colorado, Minidoka in Idaho, Milk River in North Dakota, North Platte in Wyoming and Nebraska, Truckee-Carson in Nevada, Hondo in New Mexico, Williston in North Dakota, Klamath in Oregon and California, Belle Fourche in South Dakota, Okanogan in Washington, and Shoshone in Wyoming.[64] Some $39 million had been allotted to these undertakings, but their total cost was eventually to run into hundreds of millions of dollars. They were to make possible the irrigation of nearly 2½ million acres after many years.[65] On some of these projects, like that on the Salt River, private entrepreneurs had previously built canals and low diversion dams and other works which the government had to take over at considerable cost, though they might not be useful in the enlarged plan. The main dam on the Salt River, Roosevelt Dam, as it was later called, was to be 220 feet high, 723 feet long, and to impound 1,382,000 acre-feet of water. Before much headway had been made, an earlier diversion dam was washed out, inflicting great damage on farmers below, and at the site of Roosevelt Dam all temporary dams and flumes and considerable machinery were destroyed by an unanticipated flood. The privately built canals the government took over were in poor condition and long neglected. Defects in design had permitted much silting and Johnson grass, sour clover, and various noxious weeds had intruded into the canal, and had to be destroyed at considerable expense.[66]

On the Pecos River in New Mexico private developers had proceeded without due regard to the formation of the rock-base on which piers were built. Careless methods of construction in building a canal resulted in heavy percolation losses, the washing out of the pier and the cracking of the conduit, and improper flow of the water. Private planning was bad enough but when the government compounded some of the errors, as in the Pecos project, the results were ludicrously bad.[67]

Initiation of Federal Hydro-Electric Power

It is striking that as late as 1902, and even later, those who promoted Federal reclamation seemed to have had no definite plans for using the dams and falls in canals for generating electric power. It may be said that the Reclamation Service backed into the use of power at dam sites to carry part of the cost of developing the projects. Nothing was said in the Newlands Act or preceding its adoption about the generation of power for sale, though there was discussion about power to pump water from underground sources. One of the first uses of power was in connection with the construction of the Roosevelt Dam on the Salt River where much energy was needed for making cement and carrying it to the dam site. Water power having thus been used to generate electricity for construction work, there seemed little sense in not continuing and in fact enlarging upon the opportunity the high dam provided. Long before the dam was completed Director Newell was exploring the possibility of generating power for pumping water to irrigate land not reached by grav-

[64] These early projects were bold undertakings: Arrowrock Dam in the Minidoka–Snake River development, 350 feet high; Elephant Butte on the Rio Grande, 301 feet high to store 2,207,000 acre-feet of water; Shoshone Dam in Wyoming (later Buffalo Bill), 325 feet high; and Roosevelt Dam on the Salt River in Arizona, 220 feet high to store 1,382,000 acre-feet of water. Lampen, *Economic and Social Aspects of Federal Reclamation*, pp. 54–55.

[65] Reclamation Service, *Fifth Annual Report*, 1906, pp. 43–45.

[66] *Seventh Annual Report*, 1908, pp. 53–54.

[67] *Fifth Annual Report*, 1906, pp. 90 ff., 209 ff.

ity. At the Minidoka Dam, for example, plans were underway for a generator to produce current to the amount of 7,500 horsepower which would be used to pump water to higher levels for irrigating 52,000 acres for which water could not otherwise be provided. At this early time Newell was aware that some if not most of the projects would be too expensive unless water and electric power were made available for sale to reduce costs.[68]

Congress was bolder than the Reclamation authorities. In a town site law of April 16, 1906, it had authorized the Secretary of the Interior to lease, for not over 10 years, electric power which it had been necessary to develop for irrigation purposes or where the improvements of the reclamation project afforded an opportunity for the generation of power, giving preference in its choice of leases to municipalities.[69] Notwithstanding this fairly clear statement, in 1912 the Director of the Reclamation Service (now a full-fledged bureau in the Department of the Interior) still showed the earlier uncertainty about electric power generated at dam sites or at falls in canals:

> In the construction of reclamation projects for irrigating arid lands, it sometimes becomes necessary to develop water power as being the cheapest or most available means of operating the building equipment. If the physical and market conditions are such that it is feasible to continue the operation of the power plant after its construction uses are over, the power may, in some cases, be used for pumping water. In a few cases, a small amount has been available for lighting and other purposes in the neighboring towns on the reclamation projects.[70]

Director A. P. Davis, in his annual report for 1915, reiterated that power plants constructed at dams of the Reclamation Service were operated principally for pumping water for irrigation and incidentally for other purposes, the excess power being sold for domestic or industrial uses. He reported that of the 11 hydro-electric generators and one steam-electric generator, having a combined capacity of 27,134 kilowatts, 38 percent of the output was sold and the balance used for pumping, construction, camp lights, drainage, or was lost in transmission. He estimated that at dams and drops in canals a total of 488,782 horsepower was undeveloped. Power was being sold to the Pacific Gas and Electric Company, the Inspiration Copper Company, and various other industrial companies and to six towns and cities.[71]

By 1916 the Reclamation Service was saying that considerable income was being received from the sale of power from several of the projects. Two power plants were leased to private companies when the construction work was completed.[72] The following year an important step was taken in using power revenues to minimize water costs to settlers. By the plan worked out between the water users and the officials, power revenues from Roosevelt Dam on the Salt River were to be credited to the annual accruals of construction charges. These revenues, it was estimated, would take care of all construction charges for 7 or 8 years and more than half of the balance for the period of payment. The sale of surplus electric power was becoming important as a means of reducing the costs of irrigation.[73]

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[68] *Fourth Annual Report*, 1905, pp. 351–55; Geological Survey, *Twenty-Fifth Annual Report*, 1904, p. 325.

[69] 34 Stat., Part 1, p. 117.

[70] The Director listed the different projects at which power was being or could be generated, giving emphasis upon the use of the power for pumping and drainage. Reclamation Service, *Eleventh Annual Report*, 1912, pp. 18–22. In his report for 1909 Newell said that the surplus of power in the Salt River project after all the use for pumping could be "sold for industrial purposes."

[71] Reclamation Service, *Fourteenth Annual Report*, 1915, pp. 28–33.

[72] *Fifteenth Annual Report*, 1916, pp. 22–23.

[73] *Sixteenth Annual Report*, 1917, pp. 8–9.

Growing Pains of Reclamation

For years before 1902 land speculators had been ranging over the arid West looking for possible sites for reservoirs and land that might be irrigated from them. The Act of 1888 was a farsighted measure designed to anticipate speculators by reserving such sites as should be selected after careful topographical studies. Lack of liaison between Congress and the Land Office had, however, brought the withdrawal power, as interpreted by the latter, into such disrepute that use of the withdrawal power had been halted. As a result, when the dam on Salt River was being planned, it was found that the private land to be drowned would cost the government over $20 an acre.[74] This was land which a few years earlier had gone begging. Almost everywhere that projects were adopted it was found necessary to buy at inflated prices land for construction sites and canals, and to deal with owners who held much, in many cases most, of the land to be irrigated.

As soon as it was known that the government planned to build a reclamation project in an area there immediately followed a rush for land. Thus at the first announcement of the Minidoka development on the Snake River near Twin Falls, Idaho, intended to irrigate an area practically all of which was still in government hands, there was a rush to acquire the land and within a few months every one of the approximately 1,000 tracts to be benefited was entered. Many, possibly most, of the entries were made for speculation, not farm making, and it was expected that a large number of the settlers would fail to comply with the requirements of the homestead law. Director Newell took comfort out of the fact that a large number of entries were contested, which indicated to him that speculation or no speculation, the land would be developed.[75] In 1907 Newell complained that many of the speculators refused to prepare their land for cultivation or to contribute either money or labor to the construction of the local ditches they would use in common with their neighbors. The bona fide settler, being obliged to do more than his share in building the lateral ditches, planned too narrowly and consequently many laterals had been constructed too small and would have to be enlarged.[76]

Newell was thoroughly committed to the view that "the object of the reclamation law is primarily to put the public domain into the hands of small land owners—men who live upon the land, support themselves, make prosperous homes, and become purchasers of the goods manufactured in the East and the cotton raised in the South." He wrote again in 1910, "homes for an independent self-supporting citizenship" were the fundamental purpose of the act.[77] Yet he had to learn that both the speculator and the land agents were always present wherever government land was available and not infrequently did much damage to plans seemingly designed to assure "land for the landless." In the Uncompahgre Valley real estate agents conducted such an active advertising campaign from the beginning of the project (it was to take years to complete) that settlers were brought in well ahead of water, one year in advance upon the lower areas, 2 years or more on the higher areas. Similarly, the Minidoka project in the Snake River Valley settlers were encouraged to

[74] Geological Survey, *Twenty-Fifth Annual Report*, 1904, p. 287.

[75] Reclamation Service, *Fourth Annual Report*, 1905, p. 138.

[76] Reclamation Service, *Fifth Annual Report*, 1907, pp. 85–86.

[77] Lampen, *Economic and Social Aspects of Federal Reclamation*, pp. 49–50.

take up land several years before there would be any water available for irrigation.[78] On the Truckee-Carson project in Nevada, where the building charge for water rights was to be $22 to $30 an acre in addition to the maintenance charge, it was reported that many settlers had arrived with neither capital nor experience and had failed. The heavy snow and destructive floods of 1907 had induced the engineer to release much of the winter flow of the Carson and Truckee Rivers unnecessarily and wastefully, as it turned out, for the very light snow of early 1908 was not sufficient to meet the demand for water. Newell realized the need of having a weather station high on the watershed of the two streams to meet just such a situation.[79]

It was the speculatively inclined people who acquired a settlement right or filed on land in an irrigation district with no immediate plan for its development who were to retard the success of projects. As Newell pointed out in 1913, some men living on irrigation farms spent most of their time in a nearby town at some occupation other than farm making; others lived in town while investing their savings slowly in improving the land by setting out fruit trees that in the future might pay off but currently were contributing little to the farming community; and finally there were those who neither lived on their land nor invested in its improvement, but merely waited for an increase in its value. The latter were "a great obstacle to the success" of the project as they did not use the water when it became available and raised the costs to others who did.[80] Newell early found there were large private ownerships within areas to be provided with water from Federal projects and was adamant that the excess-lands provision should be enforced. In 1905 he said in his report:

> The lands in private ownership which may be reclaimed must be subdivided and put into the hands of home makers who will cultivate the soil in small tracts of 160 acres or less. Large holdings must be subdivided, or an agreement be entered into to subdivide the tracts when water is available, in accordance with the terms of the reclamation act.[81]

An interesting arrangement was worked out between the Reclamation Service and the Northern Pacific Railroad whereby the lands the company owned through a subsidiary in the Lower Yellowstone area were to be sold at $2.50 an acre exclusively to new settlers who would be eligible for a water right.[82] In contrast to this is an agreement with the Crow Indians whereby they ceded 1,100,000 acres of their large reserve in southwestern Montana. After the Indian allotments had been selected, and appraised for sale if the allottees preferred not to retain them, the balance of the reserve was to be subject to settlement under the Reclamation Act and land suitable for irrigation was to be sold in small tracts to actual settlers at $4 an acre.[83] The Crow lands were opened to settlement in 1906 but, because it was unclear whether reclamation funds would be available because of other commitments and the desire of private parties to control "the development of these irrigation projects, the lands were not withdrawn under the terms of the reclamation act." The result, said a frustrated Commissioner of Reclamation, "has been that the lands were settled without restriction, and a number of futile attempts have been made to organize the settlers and construct irrigation works." He reported very little had been

[78] *Seventh Annual Report*, 1908, p. 77, 90.
[79] *Ibid.*, p. 139.
[80] *Twelfth Annual Report*, 1913, p. 5.
[81] Geological Survey, *Twenty-Sixth Annual Report*, 1905, p. 299.
[82] Reclamation Service, *Fourth Annual Report*, 1905, pp. 206–207.
[83] *Ibid.*, 226.

accomplished and predicted that the new owners would not be able to finance a carefully designed plan for irrigating the lands and only those tracts involving the lowest cost would finally get water. He deplored the failure, holding that it showed the advantages of reserving lands within prospective irrigation districts for limited homesteading as provided in the Act of 1902.[84]

In the Malheur plateau of east central Oregon the Reclamation Service perhaps first encountered difficulty in enforcing the excess-lands provision of the Act of 1902. A portion of the land in this area was already irrigated by a private company but a much larger acreage, as much as 75,000 to 100,000 acres, could be watered if a storage basin was constructed in the Malheur Canyon. The per acre cost of construction, maintenance and drainage and the purchase of existing ditches and water rights was estimated at $42 in comparison with the $100 an acre for which well watered land was selling. A foreign syndicate owned 25,000 acres acquired from a military wagon road company and it declined to dispose of its excess lands. Most of the other owners of land in the Malheur area were ready to cooperate with the Reclamation Service. Fifteen percent of the land was still in public ownership. Elsewhere in Oregon negotiations with excess-land owners did not look promising.[85]

By 1910 the Reclamation program was in serious trouble, though one would scarcely gather this from the reports of Director Newell. True, engineers, contractors, the railroads which were benefiting from the heavy traffic in supplies for the various projects, and western real estate and other business interests, who counted progress by growth of population and rise in land values, had little reason to be troubled. The enormous attention given to reclamation of the arid lands had brought unparalleled growth to the 16 states concerned. Population had increased 51 percent for the decade as contrasted with 24 percent for the United States. Land values were exceeding the anticipations of the most optimistic, and judging by outward appearances one might assume all was well.

No official likes to concede errors but, in 1910, it became apparent that remedial legislation was needed to salvage the irrigation program. Sereno Payne, Representative from the Auburn District of New York, brought to light the mistakes that had been made. The Reclamation Service had rushed into the construction of projects without due consideration of water resources, soil conditions, drainage, markets for crops, and because of Section 9 of the Newlands Act, which required the funds to be apportioned to projecsts in the states in relation to the origin of the funds, had even undertaken a dubious venture in Kansas that depended on pumping water from an underground stream, the costs of which the settlers were unable to bear. People had been encouraged to move to desert lands years before the water was to be available, but, to gain title, were compelled to remain on their unusable desert land for as much as 5 years. None of the projects were completed, the income from water rents which was supposed to feed into the reclamation fund and make possible the continued expansion of projects had been small, though it was anticipated it might soon reach as much as a million a year. Also, income from the public lands

[84] *Sixth Annual Report*, 1907, p. 131. The GLO Commissioner in his report for 1907, speaking about the opening of the Huntley area of the Crow lands, said that 588 farm units aggregating 32,287 acres (an average of 54 acres) were drawn for by 5,401 persons as applicants, but only 79 entries were made by those whose names were drawn. Subsequently any qualified applicant could enter the allotments and by Sept. 4, 1907, a total of 199 farm units had been entered. He does not explain why so many registered for the drawing and then lost interest. Department of the Interior, *Annual Report, 1907*, Vol. 1, pp. 92–93.

[85] Reclamation Service, *Third Annual Report*, 1904 and following reports.

was shrinking. The total cost of the projects under way was estimated at $119 million in 1910, of which $52 million had been expended. Costs were climbing rapidly, however. The original estimates had been altogether too low, some of the projects had been greatly increased in scope, and at the rate money was coming into the construction fund it might take 19 years to complete those projects already undertaken. Meantime, the thousands of people who had come in and taken up land with the promise of water were living in desperate poverty. Others were disappointed to find that one half the land to be irrigated, and probably the better half, was privately owned and held for high prices.

Representative Edward T. Taylor of Colorado tried to soften the effect of Payne's indictment of the Reclamation Service by arguing that neither the reclamation law, nor the Reclamation Service, nor even the engineers were to blame for the situation. In fact, he said, there was "no ground for criticism anywhere in connection with the matter." Then he proceeded to place responsibility on Section 9 of the Newlands Act, and on the desire of each of the states to have projects undertaken within their boundaries. Rapidly rising labor costs and the withdrawal of 200 million acres of land from entry for forest reserves (an extraordinary exaggeration) were other factors responsible for the decline in public land revenues and the plight of the program.

George W. Norris, Representative from Nebraska where there were few public lands to produce revenue for allocation to reclamation projects, was naturally favorable to reclamation at Federal expense and without the tie-up of funds as provided in the Act of 1902. He agreed that Section 9 was wrong, particularly because several officers of the Department of the Interior had declared it was responsible for the selection of dubious projects. He did not believe the public lands belonged to any particular state. He had opposed a proposal of an Oklahoma Representative who wanted to tie up funds for a project in Oklahoma, though the man could not name a project that Newell and staff regarded as feasible. It is wrong, Norris declared, "for us to assume that the money coming in from the sale of public lands ought to go back to the particular localities from which it originated." The public lands belong to the Nation, not to the states in which they are located. He doubted whether any man as Director of the Reclamation Service, not even any of the members of Congress, would have been able to disregard "the importuning of the different members of Congress" in adopting projects.[86]

In 1910 Payne and a bevy of speakers from western states supported a measure to authorize a loan of $20 million to the Reclamation Fund to make possible accelerating construction on the projects already under way in order that the settlers could have the necessary water as soon as possible and in turn start repaying a part of the costs.[87] None of the money was to be spent on any project until a board of Army Engineers had given its approval. One might well ask why, in the light of the obvious failure of some projects because of inadequate knowledge of soil, fertilizer needs, and other issues relating to tillage, it was not thought wise to have the approval of the Department of Agriculture, instead of the Corps of Engineers. Payne's bill proposed to repeal Section 9 of the Newlands Act, which most Representatives felt was responsible for unwise selections of projects, halt all entries and ban settlement

[86] *Cong. Record*, 61st Cong., 2d sess., p. 8696, 9697.
[87] *Cong. Record*, 61st Cong., 2d sess., June 21, 1910, pp. 8674–8698.

upon land reserved for irrigation purposes until the unit of acreage, the fixed water charges, and the date when the water could be applied had been announced. This later provision was included to prevent, if possible, settlers moving upon desert land intended to be included in an irrigation project before the time when the water could be provided.

Opposition to the measure came from Oscar Underwood of Alabama who insisted in bringing out all that was wrong with reclamation. Despite all that had been said about reclamation being intended to bring arid lands of the government into farming, he showed from statistics provided by Newell that in six of the project areas there was not an acre of public land, including the largest and most expensive, Roosevelt Dam on the Salt River, that on all 30 projects there were only 1,063,111 acres owned by the Federal government as against 1,402,702 acres privately owned and 136,815 acres owned by states. He was convinced that the original act and the measure of 1910 were designed to benefit mostly private holders of land.[88]

Underwood's spirited opposition and that of a few others did not prevent the passage of the bill in the House by an overwhelming vote of 255-20.[89] The Senate passed the bill with only slight discussion, after striking out the provision that a board of Army Engineers should first pass upon all projects to which the fund for accelerating construction could be used. After two conferences the section was restored and the measure enacted.

In his annual report for 1912, Director Newell analyzed in a less critical way than had Congress the errors that had been made, and the factors which had largely increased the costs of construction over original estimates. It had been an error to think that all dry soil needed was water, that it needed no fertilizer, no drainage, no protection aaginst the underlying alkali, that markets existed for crops, that anyone could succeed in irrigation farming, and that there would be a rush of people to take up and improve the land when water was available. There were plenty who wanted to speculate in land but not many who had the capital and the knowledge necessary to make a success of farming on irrigated land. The high construction costs were attributed partly to high wages, the 8-hour day, and workmen's compensation costs, rather than to misjudgments, engineering errors, and unexpected and destructive floods. As a result, the cost per acre for construction had become much higher than anticipated and if the projects were to pay the water rents the price had to be high.

Newell deplored the unwillingness of the settlers within a project to construct their own laterals, as earlier irrigators had done, thereby increasing the overall costs. Poor planning had opened up and irrigated land in some projects without settlers to make use of it and in other areas the land locators had brought in settlers to the desert localities which would not receive water for many years. A final error made by most settlers had been their insistence on filing for 160 acres when the Reclamation authorities were urging that they be content with 40 or 80 acres, knowing they would not be able to use more. Newell by 1912 had thus raised many of the questions that for the next generation were to plague the planners of the Reclamation Service, lead to drastic controls by Congress over the operations of the agency, and compel the adoption of numerous relief measures for settlers who could not meet their water payments.[90]

Dorothy Lampen, writing from the vantage point of 1930, when the weaknesses of government reclamation planning were

[88] *Ibid.*, pp. 8684–89.
[89] *Ibid.*, p. 8698.

[90] Reclamation Service, *Eleventh Annual Report*, 1912, pp. 1–11.

more obvious, suggests that since the Reclamation Service was directed by engineers during the first 30 years of its existence, as in the construction stage of course seemed wise, possibly over-attention had been given to projects calling for ever higher dams and involving newer engineering skills and techniques, and too little to economics and social planning. The point is well made, but one has to bear in mind that projects had been adopted not only because of their engineering feasibility.[91] Undoubtedly engineers were from the outset favorable to government development of irrigation and continued to favor the new and larger projects in the later years, as they favored the work of the Army Corps of Engineers. Their support has been of material aid to the Reclamation Service in some of the controversies into which it has fallen. However, the greatest source of support is from cities and businesses that need additional water for their continued growth and development and all the many economic interests concerned with growth in the far western states.

More Than Water Required

It became apparent to the officials in charge that the reclamation program of the government could not be made to flourish unless the settlers on the projects had the best information available about growing and marketing the crops adapted to their land. Somewhat belatedly, experts of the Department of Agriculture were secured to advise the settlers.[92] Experts of the Department had been studying soils of the arid lands and the effectiveness of private irrigation schemes, particularly with regard to the need for fertilizer, the quality of the local fertilizers, the problems of drainage and the rise in alkali which was already damaging some of the best soils. They reported that under (subsurface) drainage could in most instances take care of the problem, though this called for heavy extra expense. Other experts had been studying state water laws which were found to be productive of a great amount of litigation which burdened the courts and improvished water users. Especially was this true of California where:

> The chaotic and conflicting records of claims, the uncertain limitations on riparian rights, and the failure to protect all rights by the public division of the water supply in times of drought has been a source of anxiety to the user and of expense and loss to the not less worthy owner of ditches and canals.

Evaporation, seepage, agricultural engineering, and current land policies, all came in for investigation and analysis in the 1901 *Yearbook* of the Department of Agriculture. While the Secretary conceded that the homestead-type laws had been framed for the benefit of settlers, he admitted that in practice they had enabled speculators, who had no intention of farming, to grab much of the land suitable for irrigation. In the same book was a 15-page treatment of reservoirs in the Rocky Mountain States by Elwood Mead.[93]

Though Congress had not permitted the Department of Agriculture to share in the planning and responsibility for the development of the reclamation program, it has been seen that it voted funds for it to conduct research in the problems of farming on

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[91] Lampen, *Economic and Social Aspects of Federal Reclamation, passim.*

[92] The first evidence I found of appreciation of and cooperation with the experts of the Department of Agriculture is in the report of Newell in 1914. There he alludes to the experimental farms maintained on the project areas by the Bureau of Plant Industry and seems to say that they were undertaken in agreement with the Interior officials. He also says "arrangements have also been effected for expert agriculturists to act as advisors of the irrigators on each of the projects, the Secretaries of Agriculture and the Interior cooperating to that end." Reclamation Service, *Twelfth Annual Report*, 1913, p. 8.

[93] Pp. 44–46, 85–93, 415–30.

irrigated lands. The Office of Irrigation Investigations under Elwood Mead was publishing information resulting from its studies that should have been very useful in planning the projects under the Act of 1902. For example, in the 1903 *Yearbook* of the Department of Agriculture was an article on "Preparing Land for Irrigation," written by Ray P. Teele who was to become one of the outstanding authorities on irrigation, in which attention was devoted to removing the sagebrush, leveling the land, and locating laterals and buildings. Sugar beets, eventually one of the principal staples of irrigation farming, came in for a technical article.[94]

Other topics to which economists, engineers, agronomists, and rainfall and drainage experts of the Department gave their attention were rainfall and irrigation, crops used in the reclamation of alkali lands in Egypt, engineering features of drainage in irrigation projects, injury of surplus water to irrigated land, relation of precipitation to irrigation, the use of small water supplies for irrigation, and experiments in ditch lining to prevent losses from seepage, percolation, and evaporation. The Department maintained four irrigation extension farms in the West to demonstrate the possibilities and costs of irrigation with small water supplies. The loss of Elwood Mead to Australia where he inaugurated a reclamation program was seriously felt, but others were in training to continue the investigations in the Department.[95]

Status of Public Lands in Reclamation Projects

Authority to withdraw from all forms of entry public land that might be required for irrigation works and to halt all entries on public land believed to be susceptible to irrigation except under the homestead law was granted the Secretary of the Interior in the Newlands Act. In practice this meant that timber and stone and desert land entries were banned within a project area once the public notice to that effect had been issued. Settlers could enter tracts of 40 to 160 acres within the project area under the homestead law but were denied the commutation privilege allowed homesteaders elsewhere. Perhaps the most serious omission in the Newlands Act, and the most serious administrative error by officials of the Land Office and the Department of the Interior, was that the public lands within the project areas were not withdrawn from all entries until near the time when water would become available for irrigation. Thousands of people rushed to establish homestead claims on the public lands to be irrigated who could not possibly live on the desert without any income from the land for the 5 years necessary to gain title. In 1908 Fred Dennett, Commissioner of the General Land Office, brought to the attention of the Secretary of the Interior the "great hardships" the settlers had to endure.[96]

Not until 1911 did Congress move in the matter and then it took action because homesteaders on arid lands were complaining of the unusually serious drought which made it impossible for them to stay on their claims. In addition to appropriating $20 million to speed up the completion of irrigation projects Congress relieved settlers in 12 states of "necessity of residence" on their claims from February 13, to May 5, 1911. Dennett had also pointed out in 1908 that petty speculators were acquiring land with the intention of unloading their homestead rights on actual farm makers at a later time at a high price, thereby jeopardizing the latter's success. He recom-

[94] *Yearbook*, 1903, pp. 239–50, 398–410.

[95] *Yearbook*, 1907, p. 124; Conkin, "The Vision of Elwood Mead," *Agricultural History* 34:89.

[96] Department of the Interior, *Annual Report*, *1908*, Vol. 1, pp. 83, 88–89.

mended classifying lands susceptible of irrigation "up to a cost even much greater than that now entertained by the Reclamation Service, and to withdraw these lands from entry awaiting the time when they can by irrigation be made homes. . . ." He predicted that within a few years' time irrigation projects entailing a cost of $200 an acre would be considered practical because the market for land would justify such an expenditure.[97] A second measure passed in 1911 provided that no entry should be made and "no entryman shall be permitted to go upon lands reserved for irrigation purposes" until the Secretary of the Interior shall have determined the unit of acreage and fixed the water charges, and the date when the water should be applied.[98] Again Congress had acted late for announcement of all 30 of the projects had long since been made and incoming landlookers had sought out and established their claims on most of the better land susceptible of irrigation which the law belatedly tried to protect. Without claiming too much for the statistics of original homestead entries, for many factors enter into their makeup, including the fact that only a small portion were adaptable to irrigation, it is clear that the number of original homestead entries in the 11 arid states of the Far West climbed rapidly from 1900, when they were 17,806, to 63,931 in 1910, and fell off sharply in 1911 when Congress tried to keep from entry the balance of the arid lands subject to irrigation until they were ready to receive water.

Number of Original Homestead Entries in Principal Reclamation States

1900	17,806
1901	23,968
1902	31,292
1903	27,738
1904	21,057
1905	21,475
1906	31,433
1907	45,641
1908	46,945
1909	43,680
1910	63,931
1911	46,642
1912	38,152
1913	44,988
1914	49,611
1915	52,850
1916	53,419

Compiled from GLO *Reports*.

Walter L. Fisher as Secretary brought to the Interior Department in 1911 a new awareness of the social and economic issues affecting settlers on the government reclamation projects. Homesteaders were required to repay, over a period of 10 years from the time they received water, the share of the construction costs assigned to their tracts, and also their proportionate share of the annual costs of operation and maintenance. Aware that homestead lands within project areas were being taken up slowly, too slowly for the successful management and repayment of construction costs, and realizing that every encouragement should be given to those living on their homesteads and improving them, the Secretary in many instances approved

[97] *Ibid.*, pp. 83–89.

[98] Acts of Feb. 13 and 18, 1911, 36 Stat., Part 1, pp. 90, 917. Information about homestead entries in reclamation projects in these years through 1916 is almost unobtainable. For only one year before 1916 do we have data concerning original entries, that is for 1907 when 90 entries were filed for 11,385 acres. Officials of Interior have estimated the original entries for 1913, 1914, and 1915 at "more than 3,000" embracing 500,000 acres. These figures may well be underestimates for the final entries of reclamation homesteads for the same years are 1,659 for 130,479 acres. In 1916 there were 1,134 original entries and 826 final entries. Judging by later statements of the officials of the Reclamation Service many of the entries included in the table of original entries were made in antciipation of later establishment of reclamation projects and before any lands were withdrawn for that purpose. The data was provided by Karl Landstrom of the Office of the Assistant Secretary of the Department of the Interior, April 27, 1968.

credit terms calling for a tenth of the cost to be paid the first year and substantially smaller payments the next 3 years when the settler needed his capital for improvements.[99] Fisher thought the provision of the law that withheld title until the settler had completed his final (10th) payment for construction costs, which might be well over 10 years after he had first filed his declaratory statement, was unnecessarily harsh. Many needed to borrow to finance improvements and yet could not mortgage their claims, though a good deal of capital and labor had already been invested in them. He therefore recommended that reclamation homesteaders be allowed title, subject to the government lien for unpaid installments of the construction charge, after 5 years, if they had lived continuously on the land and made improvements for 3 years. Congress dealt promptly with this issue on August 9, 1912, by allowing titles to issue at the end of 3 years of residence and improvements if all sums then owing had been paid. The government's lien on a claim was properly safeguarded, while the land subject to the lien could be mortgaged. Purchasers of water rights for private land entered into the same agreement with the government's lien being placed on the land until the full construction assessment was paid.[100]

Fisher conceded that engineering skill of a high order was needed in the selection, planning, and construction of reclamation projects and wished to continue with the same able leaders of the past, but at the same time he believed that other skills were needed in the Reclamation Service, particularly those involved in human relations. Wise administrative leadership as well as engineering training was essential in the administration of each project. Payment, previously made to officials of the General Land Office, should, he felt, be collected by the staff of the Reclamation Service who were more closely in touch with users and could make adjustments more easily than the more remote land officers.[101] Though engineers were to continue to exercise great influence in Reclamation, after Fisher's period their role was never to be as predominant as it had been earlier.

It was fortunate that Fisher's humane policy toward settlers on reclamation projects was followed, for the government's irrigation projects were falling into serious trouble. Settlers were in arrears, little more than half the land for which the projects could provide water was in use, privately owned land within the project areas was held at too high a price to permit buyers to pay the heavy charges also, soils were proving less fertile than anticipated, and many settlers were ill-adapted to the pioneering conditions on new projects. Perhaps the greatest error in planning had been the total disregard of drainage. In his report for 1913 Director Newell said:

> The rise of the water table and tendency toward waterlogging and seepage of lands, except where protected by drainage works, has continued over portions of most of the projects during the past year. In some cases this rise has been sufficient to render the land unproductive and unfit for cultivation. In others it is sufficiently high to threaten the irrigability of the land at an early date if not controlled.[102]

Settlers were discouraged by their failures and their accumulating debts, the need for drainage, which meant additional costs, and the high water charges which left little if any net profit to those who had bought their holdings at inflated prices from private owners. They needed some encouragement and further aid from the government.

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[99] Reclamation Service, *Twelfth Annual Report*, 1913, p. 7.

[100] Department of the Interior, *Annual Report, 1911*, pp. 5–6, and *Annual Report, 1912*, p. 7.

[101] Department of the Interior, *Annual Report, 1911*, pp. 6–8.

[102] Reclamation Service, *Twelfth Annual Report*, 1913, p. 20.

Recognizing its responsibility for their plight, officials of the Department of the Interior and the House Committee on the Arid Lands agreed upon a bill whose main purpose was to extend the water payments for construction costs from 10 to 20 years, still without any interest, and to allow even greater flexibility in the amount of the annual payments during the first years.

The Extension Act

During the discussion in the House of Representatives of the relief bill, which came to be known as the Extension Act, Frank W. Mondell of Wyoming summarized the progress, or lack of progress as some would say, in the reclamation program. After an expenditure of $83,342,542, water was ready to irrigate 1,261,000 acres but only 886,867 acres were expected to be irrigated. On these lands there were 11,320 purchasers of water, but 1,263 persons had pre-existing rights to water antedating the coming of the Reclamation Service; 7,107 water users were on private land and 4,213 on public lands. The price paid for water (construction cost) ranged from $10 to $110 an acre, in addition to the cost of maintenance. Only 2 percent of the constructions costs had been paid despite the fact no new project had been undertaken for years and most of those underway should have reached completion or been near to it. To complete the 25 projects (some had been abandoned) called for an additional expenditure of $67 million. Arrears on construction and maintenance charges were $4,770,000.[103]

Western Representatives placed emphasis on the plight of the settlers who, at least partly through the fault of the government and at its invitation, had been attracted to land whose costly water charges they could not pay with all their other obligations and who, as Senator Reed Smoot said, would be ruined if extension was not granted.[104] The need of these homesteaders for relief was irresistible, though some hardened Representatives from other sections could see no more reason to aid farmers on irrigated land in Idaho than hard-pressed grain farmers in Indiana or Missouri. One speaker said there was a good deal of farmland back east that could be bought for less than the water charges on these irrigated lands and wondered about the wisdom of subsidizing this new type of farming so generously.[105] Evidence was presented to show that settlers had been encouraged to move on to dry land for which there was no water, or where water came very late, or where there was not enough, or where it drowned out much land and made it useless.[106] Westerners won a major victory, when they defeated by 140-81 an effort to require interest to be charged on all outstanding water obligations.[107]

Before the long discussion in the House of Representatives was over, Oscar Underwood of Alabama, a supporter of extension, introduced an amendment which, after July 1, 1915, would require that appropriations from the Reclamation Fund be voted by Congress instead of allowing the fund to be allocated by the Secretary of the Interior. Though both Houses had long since insisted on leaving little control over the allocation of funds to administrative agencies and had stripped from the Forest Service discretion in the use of funds from grazing fees and the sale of timber, western Senators and Representatives fought hard to retain in Interior full responsibility for the Reclamation Fund,

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[103] *Cong. Record*, 63d Cong., 2d sess., pp. 12225–32.

[104] *Ibid.*, pp. 12959, 13360.

[105] *Ibid.*, pp. 12250, 12501, 13012. All efforts of opponents of Federal reclamation to require interest on all outstanding water charges were defeated, the last being defeated in the House by a vote of 140–81.

[106] *Ibid.*, pp. 12974, 13010.

[107] *Ibid.*, p. 13012.

showing thereby approval of its past decisions and confidence in those it might make in the future. Some Senators even thought it better to abandon the effort to provide relief to delinquent settlers than to sacrifice the power the Secretary of Interior had over the fund. But in the end the amendment carried 178-49.[108]

The Extension Act of August 13, 1914, stated that persons whose lands thereafter acquired water from Federal projects were to pay 5 percent of the construction charge at the time of making their water right application, five annual payments of 5 percent beginning on December 1 of the 5th calendar year after the first payment and 10 annual payments thereafter of 7 percent. For settlers on existing projects the balance due was to be paid over the next 20 years, with 2 percent paid annually for the first 4 years, 4 percent for each of the next 2 years and 6 percent each for the last 14 years. Penalties of 1 percent a month were to be levied against delinquents and, if homesteaders, their entries were to be forfeited. No addition was to be made to the construction charge for water except in agreement with users of the water. Section 12 provided that owners of excess lands (over 160 acres) within a project who applied for water must agree to dispose of all such excess land "upon terms and at not to exceed such price as the Secretary of the Interior may designate. . . . Landowners who refused to abide by this requirement were to be denied water for any of their land. Section 13 spelled out in detail the period in which excess lands or farm units should be sold.[109]

Acreage Limitations Provisions

Little attention had been paid in the debates to the excess-lands provision in Section 12. Senator Marcus A. Smith of Arizona said of it:

> This bill stops the monopoly of the holdings within these irrigation districts and forces the unused land to pay its part in the development, and breaks up monopoly in speculative land.[110]

Smith clearly thought the section important and tried to resist an amendment offered by more conservative Senators that he thought would reduce its effectiveness, but otherwise there was no discussion of the section. Nor, for that matter, had the Director of the Reclamation Service given any special attention to the excess-lands provision, save to allow the project directors to include something very general about the disposal of excess lands in the contracts each water user was required to sign. About the North Dakota Pumping Project on the Great Northern Railroad we are informed that "more than half the acreage, both irrigated and unirrigated, is owned by non-residents. These non-residents, waiting for the unearned increment, are responsible for the slow development of the project."[111] On the whole the reports are chary of information concerning the proportion of lands held in large tracts and by whom they were held. There is no evidence that either the Geological Survey or the officials of the Reclamation Service felt there was any need of investigating the problem of the ownership of land other than to compile data showing what land was owned by public agencies and what by private individuals.

In 1914 Director Newell was sufficiently troubled by critics who claimed that the reclamation program had "favored specu-

[108] *Ibid.*, pp. 12974, 13010, 13359–64, 13453.
[109] 38 Stat. 686.

[110] *Cong. Record*, 63d Cong., 2d sess., pp. 5028, 13362.
[111] Reclamation Service, *Fourteenth Annual Report*, 1915, p. 225. On the Umatilla project a contract was made with a land company for the use of water with the only stipulation apparently being that it should improve a certain number of acres annually. *Ibid.*, p. 239.

lators," and that "the greater percentage of the lands under the reclamation projects is in the hands of speculators, the smaller portion being in the hands of actual settlers," that in his report he devoted two paragraphs to showing that these charges were "not altogether correct." He conceded that much land within the project areas had been withheld from settlement for higher prices, and that many settlers had paid excessively high prices for their tracts but he was certain that the greater part of the reclaimed lands was in the hands of small owners who were trying to cultivate it and were complying with the residence and improvement requirements. He also maintained that the larger owners were selling off their tracts in small quantities, as the Newlands Act had contemplated, but he offered no evidence for his statement.[112] Elsewhere he declared that the distress of settlers on reclamation projects had been caused for the most part by the high prices they had paid in buying land of speculators, or from previous settlers, thereby assuming a burden of interest at 8 to 12 percent and heavy taxes in addition to the water charges. It was the "many pitiable instances of this kind," said Newell, that led to the insertion in the Extension Act of a provision empowering the Secretary of the Interior to fix the price at which excess lands might be sold.[113] Unfortunately, this provision afforded little relief, for the excess-land holder could sell a small tract to a middleman at the price the officials set and the middleman was then free to sell at the full speculative price land was bringing at the time. It never proved easy to outguess the speculator.[114]

The application of the land limitation provision of the Newlands Act had been somewhat enlarged by the adoption of the Warren Act of February 21, 1911. Primarily designed to permit the Secretary of the Interior to furnish water to individuals, corporations, associations, and irrigation districts wherever the source of water for a project was greater than its needs, the Warren Act required that "water shall not be furnished from any such reservoir or delivered through any such canal or ditch to any one landowner in excess of an amount sufficient to irrigate one hundred and sixty acres." Water was thus to be made available for the irrigation of tracts no larger than 160 acres outside the projects but there was no provision requiring such users to dispose of their excess lands.[115] By 1915 water was being delivered to 36 irrigation, ditch, and canal companies but the Director of the Reclamation Service provided no information concerning effect of the land limitation provision.[116]

Mounting Costs

Criticisms of the reclamation program, the need to hasten construction in order that settlers could have the vital water, the necessity for extending payments from 10 to 20 years, the failure to plan for drainage and seepage, together with the numerous errors in selecting and constructing some projects, all combined to make officials slow to suggest new projects. The Director tried to present the work of the Reclamation Service in the best possible light by giving emphasis in his reports and in other literature to the high average value of crops produced and the rapid appreciation of the value of the land within the projects. For example, in 1921, when troubles were again piling up, the Director stressed that government irrigation had increased the average value of land within

[112] *Thirteenth Annual Report*, 1914, pp. 19–20.
[113] *Ibid.*, pp. 26–28.
[114] *Fifteenth Annual Report*, 1916, p. 11.
[115] 36 Stat. 925.
[116] Reclamation Service, *Fourteenth Annual Report*, 1915, pp. 26–27.

projects by $200 an acre or a total of $350 million and that in private projects supplied with water by the government under the Warren Act the average value had increased by $100 an acre, or $100 million. The combined total of enhanced value was $450 million. This figure, when compared with the total net cost of all government projects, successful and unsuccessful, then $130,742,488, would appear to prove that the government's investment in reclamation projects had been a fine piece of business. The catch is that whether or not land values had risen to the extent stated, they did nothing to repay the government the sums it had invested. The amount being collected in water charges to cover construction costs was not encouraging. By 1921 only $10,677,250 in construction costs had been paid and a considerable part of it had come not from water rents but from power income. Furthermore, in 1921 only $1,380,000 was paid on construction costs. Reclamation was a boon to the owners of land who clearly had been given large benefits.[117] The fault with the calculations of Reclamation Service officials is that they refused to face the fact that the Service was performing a task assigned it, perhaps on the false assumption that it would pay off in returned dollars, and when they recognized that it could not they resorted to what amounts to circumlocution to prove good results.

Reclamation farmers had done their best to expand their output during the World War, partly as a result of Herbert Hoover's plea that "Food Will Win the War," and, like other staple crop producers elsewhere, they had enjoyed the benefits of high prices, which lasted until mid-1920. Between 1916 and 1921, 5,499 new homestead filings in irrigation projects had been made and 3,949 homesteads had been carried to final entry and title. A better index of the expansion of irrigation on Federal projects in this same period is that of the increase of irrigated acreage from 922,821 in 1916 to 2,228,750 in 1921 or a 70 percent increase. Thereafter, with the exception of 6 unusually unfavorable years (1922, 1924, 1932-34, and 1938) the irrigable acreage increased in regular progression as new projects were completed and additional water was provided to older ones.

In mid-1920 prices fell disastrously, marking the beginning of a long period of agricultural distress, that was serious within the reclamation projects.[118] The annual crop value of the irrigated acreage fell from $152,978,887 in 1919 to $83,601,690 in 1922 and was not to reach the 1919 figure again until 1929, by which time there were 29 percent more irrigable acres being watered by Federal projects. Settlers in the project areas, who had early begun to fall into arrears in their payments, felt the decline severely, the more so as many had bought their land during the years of inflation. The 1918 and 1919 rate of delinquency was 14-15 percent, in 1920 it was "higher," and in 1921 and 1922 it was 39-40 percent.[119]

The fact was that the post-war agricultural letdown bore heavily on the indebted farmers within reclamation projects. Immediate relief was necessary, for under the law persons delinquent in their payments were not entitled to receive water, and their contracts were subject to cancellation. Doubtless some administrative relief had

[117] The data is from the *Twentieth Annual Report*, 8 ff.

[118] James H. Shideler, *Farm Crisis, 1919–1923* (Berkeley, 1957), esp. Chap. II, "Agriculture's Price Panic." Data on irrigable acreage and its crop value within Federal reclamation projects provided by Floyd E. Dominy, Commissioner, Bureau of Reclamation, March 7, 1968.

[119] These figures were offered in the congressional discussion by Representative Kinkaid and others. *Cong. Record*, 67th Cong., 2d sess., Feb. 28, 1922, p. 3174.

been granted, but its legality could be questioned and the extent of it is not clear, since the officials were more concerned to give attention to their successes than their failures. It was easy for an incoming Secretary of the Interior, following 8 years of control of the Department by the opposite party, to say in 1921 that "very many mistakes had been made in the past and at times much dissatisfaction has been expressed at the management of the reclamation work." "Those connected with the Department and engaged in securing settlers for the lands have . . . been overly enthusiastic and painted the beauties and advantages of some of our projects in gorgeous colors. Stern reality has in many instances disenchanted the settler. . . ." But he then went on to say "practically every project is successful" which was far from accurate if the ordinary meaning of success is meant.[120]

The pressing need for relief induced Congress to adopt a joint resolution on May 17, 1921, which stated that because of the financial stringency and the low prices for agricultural goods, the Secretary of the Interior was authorized to furnish water during the season of 1921 to applicants who were in arrears for more than one calendar year.[121] The 2 following years having brought no improvement, Congress voted in each to extend an additional year of credit to hard pressed delinquents who were not able to meet their obligations but who were continuing to farm their land. Interest on delayed payments was to be reduced from 12 to 6 percent and the accrued obligations were to be added to the total due, with payments to extend over 20 years from the enactment of the extension. In 1924 extensions of payments to March 1, 1927, were authorized and in 1926 additional extensions were allowed.[122] Such a record of failure dating from the relief measures of 1911 with 1,741 applications for extension under the Act of 1922, 3,239 under the Act of 1923 and with 60 percent of the water users in arrears by 1925 made necessary a serious reconsideration of the entire program.[123]

Committee of Special Advisers

Hubert Work, who became Secretary of the Interior in 1923, sensing the unrest among settlers on the irrigation projects became convinced that only through a complete overhaul of activities of the Reclamation Service would it be possible to save it from catastrophe from within and political destruction from without. Work appointed a Committee of Special Advisers on Reclamation to hold hearings in the West and to make recommendations for changes, improvements, and abandonments. It was no face-saving committee, but a group of distinguished leaders well competent to conduct the investigation. Thomas E. Campbell, who was just completing a term as Governor of Arizona and who was familiar personally with many of the problems facing irrigation farmers, was chairman. John A. Widtoe, former president of the University of Utah and author of two works on dry farming and irrigation, James R. Garfield, a former Secretary of the Interior in the Roosevelt administration and, above all, Elwood Mead constituted the better known of the six-member committee.

Mead had been state engineer responsible for water policies in Wyoming from 1890 to 1899, head of the Office of Irriga-

[120] Secretary of the Interior, *Annual Report, 1921*, p. 9.

[121] 42 Stat., Part 1, p. 4.

[122] Act of March 31, 1922, 42 Stat., Part 1, p. 489; Act of Feb. 28, 1923, 42 Stat., Part 1, p. 1324; Act of May 9, 1924, 43 Stat., Part 1, p. 116; Act of May 25, 1926, 44 Stat., Part 2, p. 648.

[123] Secretary of the Interior, *Annual Report*, 1925, pp. 8–9.

tion Investigations in the Department of Agriculture from 1899 to 1907, in charge of the water conservation and reclamation program of the State of Victoria, Australia, from 1907 to 1915, a member of the faculty of the University of California, chairman of its Department of Irrigation and head of California's Land Settlement Board from 1917 to 1923. Thoroughly believing that through reclamation of the arid lands the West could be made to blossom like the Garden of Eden, Mead kept his feet on the ground, gave adequate consideration to economic and social factors in determining the feasibility of projects, and felt that an entirely new method of accounting was necessary in appraising them. Subsequently, as Commissioner of Reclamation, Mead kept closely in touch with the people on the projects and had their support as well as that of the business interests and the engineering fraternity. Through masterful use of publicity he molded them into a power group effectively supporting the reclamation program. He had been quite critical of the practices of the Reclamation Service and his views show throughout the Report of the Fact Finders Committee, as Work's committee of special advisers was called.[124]

The committee summarized the financial position of the government reclamation projects to June 30, 1923, showing in round numbers that out of a total of $143 million only $101 million was supposed to be repaid out of water right contracts and that the balance was unsecured. Water users had repaid 10 percent of construction costs subject to repayment, had defaulted on 14 percent, and had defaulted on 17 percent of the operation and management charges, notwithstanding the extensions which had been granted. Out of 28 projects the settlers on only one had met all payments when due. Insolvency and failure faced a number. The area originally estimated to be reclaimed was 3,056,427 acres and of this amount irrigation water was available for 1,692,700 but only 1,202,130 acres were actually irrigated in 1922. The average estimated construction cost per acre was $30.75; the actual cost was $83.76 an acre for the area for which water was available and $117.94 per acre for the area actually being irrigated. Piecemeal construction over many years, "irremediable errors" in selection, frequent changes in plans and enlargement of projects had added to costs.

The committee frankly recognized that a part of the investment in reclamation would never be recovered. The plight of the settlers was attributed to: failure to seek the aid of agricultural authorities in planning; failure to classify the lands and to levy water charges in relation to their ability to produce which had led to inflexible charges for all lands receiving the water; and failure to select as settlers men with sufficient capital and experience who were interested in farm making, rather than in profiting from rising land values after a year or two. Evidencing the malfunctioning of the program and the dissatisfaction with conditions were the high rate of turnover and the relatively few original settlers remaining. Finally, bureaucratic control from Washington had produced in the settlers a growing inclination to look upon themselves as wards of the government entitled to generous and continuing aid.[125]

The committee examined the Newlands Act, especially Section 9 which required

[124] Paul K. Conkin's excellent article on "The Vision of Elwood Mead" in *Agricultural History*, 34:88–97, is more concerned with Mead's promotion of settlement communities than with his career as Commissioner of the Bureau of Reclamation.

[125] The report of the Special Advisers on Reclamation, or the Fact Finders Committee, appeared as "Federal Reclamation by Irrigation," *S. Doc.*, 68th Cong., 1st sess., No. 92 (Serial No. 8238), pp. xi–xvi, 24–27.

that reclamation funds be expended among the states roughly in proportion to the income from land sales within them. Although this section had been modified in 1910 it had led to the adoption of projects in each of the western states (except Oklahoma) which for years to come, even after 1924, would absorb all money available. As the *World's Work* later pointed out, local pressures by insolvent irrigation districts needing government funds to increase their supply of water, by landowners wanting the government to surround their property with settlers to increase land values, and by chambers of commerce were responsible for old projects and the adoption of new ones, no matter how reckless.[126]

The committee was also critical of the provision requiring the repayment of construction costs within 10, later 20 years, maintaining that for some projects 20 years' time was sufficient but on some others a much longer period was necessary. Perhaps the greatest weakness of the act was its failure to provide any form of control over the selling of land within projects by first settlers or by excess-land holders who were able to sell for exorbitant prices. It should be said, however, that such control over prices would have been extremely difficult to enforce. The law gave no authority to select the most likely candidates among possible entrymen looking for public land, and it is doubtful that the West would have tolerated a bureaucratic authority exercising such power. As originally contemplated, Federal reclamation and irrigation projects were intended to make it possible for settlers to homestead arid public lands, without cost so far as the title was concerned. But, under the pressure of the various states and real estate interests, projects were undertaken that either had no public land or very little. Only seven of the 22 on which payments were being made in 1922 had more public land than private land, three had no public land and only 37 percent of the land on which contracts had been made was public.[127] The committee was convinced that the principal beneficiaries of the Newlands Act had been the speculative owners who had anticipated the government by entering potentially irrigable land before the Act of 1902 was adopted or before withdrawals were made.

The achievements of the Reclamation Service were well summarized in the committee's report. The Service had built at least two of the highest dams in the world, had created huge storage areas for water for irrigation, had developed a number of large power projects, had built many miles of canals, had provided water sufficient to irrigate 1,202,000 acres which were divided into 34,276 farms and on these farms lived 131,194 people. This was about equivalent to the agricultural situation in Massachusetts. In a sense reclamation had created a new state. Such achievements were not to be belittled.[128] But the committee was primarily created to make recommendations for the improvement of the reclamation program and it passed over these accomplishments quickly.

The detailed recommendations of the committee may be summarized:

1. Temporary relief to settlers should be granted as needed.
2. New projects or extensions of existing projects should be authorized only after the most careful investigation by experts from the Departments of Interior, Agriculture, and Commerce.
3. Greater care should be taken in estimating costs.
4. Drainage, not included in any original plans, should be given careful attention.

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[126] "Reclamation Becomes a Pork Barrell," *World's Work*, 51 (February 1926), 354.

[127] *Ibid.*, p. 114.

[128] *Ibid.*, pp. 29–30.

5. Where costs were too great for the land to bear, adjustments should be made.

6. Costs should be allocated in proportion to the productive value of land.

7. No new project should be authorized until all privately owned land in excess of a single homestead unit for each owner should have been acquired by the United States for subdivision and sale to settlers.

8. Lands in project areas should be classified according to their physical and economic features.

9. Homesteaders on infertile and unproductive land should have the privilege of exchanging their tracts for suitable land.

10. Payments on construction charges for infertile land should be suspended.

11. Settlers should be carefully selected, for their industry, experience, character and capital in future.

12. Settlers should be encouraged to form water users' associations of irrigation districts to take over and manage the project works.

13. Income from power plants should be credited to construction costs.

14. Penalty rates on all unpaid charges when due should be 6 percent annually, instead of 12.

15. Payment plans should be made more flexible.

16. Reclamation authorities should cooperate closely with the Department of Agriculture and the state agricultural colleges and experiment stations in disseminating knowledge of the crops and methods of farming best fitted for each project, and agricultural advisers should be made available.

17. On the Yuma, King Hill, and Milk River projects owners of excess lands should be required to sell at prices determined by the Secretary of the Interior for division into small units.

18. Because of excessive and unwarranted costs in the Lower Yellowstone project and the fact that the land would not bear a $60 an acre water rental charge it should be reduced by $15 an acre.

19. The cost of general investigations of projects and of the Washington office should not be charged to the construction accounts.[129]

The committee's general recommendation was as follows: The Reclamation Service needed a comprehensive reorganization into three divisions: a division of engineering whose functions should be limited to construction, operation and maintenance; a division of finance to coordinate and supervise expenditures and collections; and a division of farm economics to aid settlers in getting established and improving their farm practices, and to have charge of classification of the land and promoting the settlement of unoccupied land.[130]

Efforts Toward Reform

Congress used the not uncommon device of tacking such of these proposed reforms as it approved onto a deficiency bill in December 1924. No new projects were to be undertaken until accurate information was available concerning the water supply, engineering problems, the cost of construction, land prices, and likelihood of the project returning its cost. The Reclamation Service was to determine the qualifications of applicants, such as their industry, experience, character, and capital. Irrigable lands in new projects were to be classified according to their economic potential and the Secretary was authorized to assign variable charges for the different classes of land. On existing projects annual charges were to be 5 percent of the average gross annual acre income. Reports were to be made to Congress of land in projects on which, for lack of fertility, adequate water, or other reasons, the settlers could not pay construction costs. The cost of the Washington office of

[129] *Ibid.*, pp. 1 ff.
[130] *Ibid.*, p. 152.

the Reclamation Service was to be charged to the Reclamation Fund but not to the construction or operation and maintenance funds. An Act of May 25, 1926, extended the maximum period of payments to 40 years but required 6 percent interest on delayed payments.[131]

Before the report of the Fact Finders Committee was presented, Hubert Work had appointed Elwood Mead, whom he called "the greatest American authority on rural institutions," Commissioner of the Bureau of Reclamation,* as the agency was now called.[132] Nothing could have given more encouragement to the settlers and to the West generally than the appointment of Mead, a distinguished authority, a thorough believer in reclamation, though critical of many policies in the past. In the 12 years he served as Commissioner, Mead maintained close liaison with Presidents Coolidge, Hoover, and Roosevelt and with Congress, which generally accepted his judgment and pushed reclamation along rapidly. Experts in the Department of Agriculture, however, watched with deep concern the expansion of irrigation and the opening of new land to agriculture at a time when the country was faced with large unsaleable surpluses and when prices of agricultural commodities were falling.

*(*Editor's note:* To perform the functions called for in the Reclamation Act of 1902, the Secretary of the Interior in July 1902 approved an organization plan for a Reclamation Service in the Geological Survey. In March 1907 the Reclamation Service was removed from the Survey and established under a Director. In June 1923 the Secretary created the position of Commissioner of Reclamation and changed the name Reclamation Service to Bureau of Reclamation.)

In his first report, in 1924, Mead took up the thorniest of the recommendations the Fact Finders Committee had presented, "that no reclamation project should hereafter be authorized until all privately owned land in excess of a single homestead unit for each owner shall have been acquired by the United States or by contract placed under control of the Bureau of Reclamation for subdivision and sale to settlers at a price approved by the Secretary." This recommendation had been opposed by some who regarded "land speculation as a legitimate feature of reclamation" and had no understanding of how it had increased costs beyond the capacity of settlers to pay. To Mead, public ownership or public control of the selling price of land for settlers was the first requisite for successful planning of new projects and failure to gain that control or ownership was the first cause of past failures. He regretted that the amendment to the deficiency bill then working its way through the congressional mill had no provision concerning such Federal ownership or control. Unless that control is provided for, declared Mead, "there is no reason to anticipate better results in the future," and Reclamation officers "would face the heartbreaking experience of seeing settlers work under conditions so discouraging as to give almost no hope of success." He did not discuss the equally necessary control of prices at which the first or second generation of settlers could sell their land to later comers.

Mead devoted a section of his report to tenancy on the reclamation projects. "The principles of the public land law," he said, are opposed to tenancy "and the absentee landlord did not have a place in the picture of Federal irrigation as drawn by the sponsors of the organic act of 1902." Yet it had existed from the outset, ranging from 21 to 32 percent on the projects. He attributed the growth of tenancy to large ownerships within the areas and to foreclosure of mortgages too heavy to carry, both the result of speculation. Though ex-

[131] Act of Dec. 5, 1924, 43 Stat., Part 1, p. 702; 44 Stat., Part 1, pp. 647–49.

[132] *New Reclamation Era*, XV (May 1924), 69.

cess holdings were prohibited by law from receiving water he reported that the government had been unable to cure the trouble. "Although the spirit of the law is broken, the letter of the law is observed by fictitious conveyances, and the Government is almost helpless." What was necessary was more rigid and searching investigation of excess-land holdings and better control over private holdings when projects were adopted, together with the selection of real dirt farmers, not petty speculators drawn by government publicity and the hope of getting by lottery a tract they could quickly sell at a profit.[133]

The Commissioner returned to the excess-lands question in 1925, saying that conditions were ripe for dividing up the larger holdings which were not using the water available to them. Also, the high proportion of tenancy was a source of great concern to him. With government aid tenants might be helped to become owners of excess lands. The Bureau had not thought proper to enforce the excess-lands provisions during the agricultural depression following the World War but with better conditions he thought the disregard of the law should cease. Interestingly, Mead came to feel the growing rate of tenancy on the reclamation projects was a source of alarm before the Department of Agriculture felt much concern. Mead was troubled, and for good reason, because on some of the projects the population, the number of owner operators, and the acreage of cultivated land had declined. Delinquencies were reaching a staggering proportion. Closer settlement, smaller farm units, more efficient use of the land were his objectives. But settlers had come to expect further extensions, counted upon it, did not make their payments even when they probably could, and those who did pay were discouraged by the fact that others, equally able to, were waiting for further government aid. Mead favored legal action to compel payments, while advocating abandonment of land not suitable for farming.[134]

The measures Mead and the other advisers regarded as extremely important to revive the spirits of the heavily indebted settlers on project lands and to induce them to make greater efforts to meet their water payments were: the forgiveness or elimination of some $14 million in construction costs, or approximately 8 percent of the total, on the ground that items had been included in the original sum that should

[133] *Ibid.*, pp. 11, 34. Four bulletins prepared by the Bureau of Reclamation to draw attention to the "Opportunities for Farm Ownership" on reclamation projects provide information concerning areas where land was becoming available for settlement. On two projects—the Lower Yellowstone in Montana and North Dakota and the Belle Fourche in South Dakota—there were no public lands open to homestead; on the other two—the Willwood Division of the Shoshone project in Wyoming and the Tule Lake Division of the Klamath project in Oregon and California—all lands available were public. Prospective homesteaders were told that they must have at least $2,000 or part cash and livestock and equipment, must have had 2 years of experience in farming, and must appear before an examining board to pass inspection. The brochures provided information concerning crops, transportation facilities, marketing possibilities and, for the projects without public lands, readers were informed that the prices of land and selling terms were controlled by the Bureau of Reclamation which approved options on farms or prospective farms. The selling prices were determined by an independent committee of appraisers. On the first 20 farms announced for the Belle Fourche project the average size was 136 acres, the average number of irrigable acres was 74, the average price was $4,990. Included in these 20 were some well-developed farms. The average cost of a water right was $45 an acre of which 13 percent had been paid by the landowners. The operation and maintenance charge ran from $1.25 to $1.50 an acre. *Opportunities for Farm Ownership on the Belle Fourche Project* (Washington, 1927); *Opportunities for Farm Ownership on the Willwood Division, Shoshone Irrigation Project, Wyoming* (Washington, 1927); *Opportunity for Farm Ownership on the Tule Lake Division, Klamath Irrigation Project* (Washington, 1927).

[134] Bureau of Reclamation, *Twenty Fourth Annual Report*, 1925, pp. 3–12.

have been omitted, and the suspension of all construction and operation and management costs on 185,460 acres which had become water-logged and saturated with alkali, leaving the soil porous, infertile, rough, unproductive, and subject to blowing or erosion. These recommendations became part of the Adjustment Act of May 25, 1926.[135]

By relieving the poorer land of heavy obligations, reducing the total construction costs of most of the projects and the per acre charges for both construction and operation and management, and by granting additional relief to the most distressed of the water users, whose payments were extended, Congress went far in rehabilitating the financial conditions of the projects. In addition, the Bureau of Reclamation encouraged water users to organize irrigation districts or cooperative associations to take over the management and collections from the government. This was the goal which it was hoped all projects would ultimately reach.

From the outset of his appointment as Commissioner, Mead showed a concern not only for improving and making more successful the projects already underway or completed but an eagerness to develop new ones. Above almost anything else this was what the arid states wanted. In the midst of the bad years when reclamation farmers were falling despondently into arrears, when farms were being abandoned and producers were having difficulty in marketing some of their crops, Mead and Secretary Work proposed six new projects with estimated costs of $50 million: one in Oregon (which felt it had not been generously treated in the past), a second partly in Oregon and partly in Idaho, one in Utah, and three which would enlarge and perhaps make more feasible existing projects, either public or private. The Act of December 5, 1924, had declared that no new projects should be adopted without the most careful investigation of soil, drainage, topography, engineering, costs, and economic feasibility and Mead and Work made sure that all needed investigations were carried out. Possibly they did not give sufficient attention to the problem of recruiting settlers; there were still many vacant farm sites on existing projects which were not carrying their share of costs, to the annoyance of all administrators. Mead conceded that the costs of clearing desert plants and leveling and seeding the land on the proposed Powder River project would be from $25 to $40 an acre which, in addition to other costs, would be impossible for prospective settlers to meet and consequently he suggested that this work should be done by the Bureau. Furthermore, he recommended that "some advances" be made to get the settlers well under way. This was the farthest proposal yet made to draw settlers to the reclamation projects and if it had been noted by eastern critics would surely have stirred up a hornet's nest in Congress. On these new projects officials would be up against the same problem that had created so much difficulty in the past; the bulk of the land to be irrigated was privately owned, 348,000 acres as against 54,000 acres of public lands.[136]

All six of the projects were adopted, though their final costs were to be far larger than the original estimates, as was commonly the experience. Retrospectively, one may add that the proportion of repayment of construction costs 42 years later has been very small, insofar as the projects can be distinguished from larger ones, of which they were a part. Mead was carrying

[135] 44 Stat., Part 1, p. 636.

[136] *Twenty Third Annual Report*, 1924, pp. 8–24. Mead recommended the abandonment of two of the early projects in New Mexico and North Dakota and the sale of the improvements and might well have written off another in Kansas.

out the mandate of Congress in initiating studies for additional projects which now required congressional sanction for their adoption and at the same time was complying with the urgent demands of the arid West.[137]

Officials of the Bureau of Reclamation had good reason to pause and reconsider their objectives and procedures. On the existing projects slightly over a third of the units were tenant operated in 1927 and both farm abandonment and foreclosures were becoming fairly common. Mead continued to inveigh against the "evil of speculation," which had "been a vampire that has done much to destroy the desirable social and economic purposes" of the Newlands Act. He declared that this act had been "largely used as a life-saver for bankrupt private projects" but yet he was ready to rush into new ones where exactly the same problems were bound to arise—large absentee ownerships and aid to unsuccessful private enterprises.[138]

In the *New Reclamation Era* on a number of occasions Mead referred to the firm control he was about to establish on the newly adopted projects, whereby excess-land holders were to be denied water on 160 acres unless they accepted the appraised price for which they would dispose of their surplus lands, but he never got around to explain how the owners would be compelled to disgorge their holdings, though he did say the Secretary was empowered to order the excess land into market and sell it for what it would bring after 3 years of delay. He also brought out that where a holder was willing to reduce his holding to less than 160 acres, he could sell at the market price on condition that 50 percent of the excess over the Bureau valuation was turned over to the district as payment on the water charge of the tract thus sold.[139]

Mead seemed to be groping for some way to control the price of land within the projects which would avoid the violent changes in land values, prevent runaway prices in periods of rising prices, and assure the Bureau of Reclamation the right not only to determine the level at which the excess lands should be sold to settlers but also the price at which first settlers might sell to later comers. At times he seemed to come close to Henry George's view that the title should remain in the government and only occupancy rights be privately owned, but even here controls were needed to avoid the influence of speculation.

Surpluses and Reclamation

If the 13 far western states and the officials of Reclamation were convinced that Federal reclamation had been successful, there was a growing number of people in other sections of the country, and indeed in the Federal bureaucracy, who were questioning the wisdom of further development. Surpluses of cotton, wheat, fats, and other agricultural products, the production of which had been greatly expanded during the World War, were larger than could be easily marketed, the carry-over from one year to another was increasing, prices were depressed and so was agriculture generally in the twenties. Through their national organizations the farmers sought government aid in marketing their products and getting rid of the surplus through the export debenture plan or equalization fee. Failing that, these same organizations, their spokesmen in Washington, and many members of Congress were wondering how it was possible to justify expanding agriculture out-

[137] Statistical Appendix to the *Summary Report of the Commissioner, Bureau of Reclamation*, 1966, p. 75.

[138] *New Reclamation Era*, XVI (November 1925), 164–65.

[139] *New Reclamation Era*, XVI (November 1925), 164; XVII (September, November, 1926), 156, 186; and XIX (October 1928), 151.

put by continued and enlarged reclamation projects in the Far West when wheat farmers of the Great Plains and cotton farmers of the South were faced with near bankruptcy prices. At a conference on Reclamation and Land Settlement in Washington in 1925, W. M. Jardine, Secretary of Agriculture, voiced this concern, declaring that in the face of continued overproduction, and the abandonment of many farms in the Northeast which could yield as good returns as many reclamation farms "extensive Reclamation at this time is inopportune."[140] Two years later he declared that Federal development of new farmland should be undertaken only when the need was clear. He urged the need for a comprehensive study of reclamation policies and projects now under way or contemplated. Interest free loans, which reclamation policy essentially provided, meant giving the irrigation farmer a large subsidy denied farmers elsewhere and created a special interest group.[141] Jardine's successor, Arthur M. Hyde, in 1931 again warned against the unfair subsidy given the settlers on reclamation projects which he found inconsistent with efforts being made to restrict agricultural production.[142]

At the National Conference on Land Utilization which was called by the Secretary of Agriculture in 1931 it was recommended that the Bureau of Reclamation confine its efforts to completing projects already under way and to rehabilitating those farmers on projects who were economically distressed, but that no new projects be undertaken until the agricultural needs of the country would justify them.[143] L. C. Gray, distinguished land economist and agricultural historian and later second in command of the submarginal land retirement program, warned that the Bureau of Reclamation was not only counting on interest free loans to build the great dams for irrigation projects but was now adding to the subsidy the income from power projects which would be used to reduce the water charges.[144]

With the adoption of the Agricultural Adjustment Administration Act in 1933, the avowed purpose of which was to reduce the output of basic farm commodities, and of the submarginal land retirement program in 1934, the ambiguous position of the government became evident. It was paying farmers to reduce output and buying land to take it out of production while investing large sums of money to bring into cultivation high yielding, and liberally subsidized land in the Far West at the same time.

Commissioner Mead took the offensive against this do-nothing policy. He held that except for the California projects, Federal irrigation was not keeping up with the pace of western growth; that its production was needed locally. He denied that the crops grown on irrigation land were those in surplus and held that irrigation land constituted but 3/10 of 1 percent of the land in farm use.[145] The West needed the water, the crops, the electric power, the purchasing power of the project settlers, the employment, that reclamation provided. Mead did not entirely overcome the opposition but he had confidence that time, the rapid growth of the West, and the ability of the West generally to act together on questions affecting its needs would assure the well-being and expansion of reclama-

[140] *New Reclamation Era*, XVII (extra, 1925), 2–3.

[141] Department of Agriculture, *Yearbook*, 1927, p. 27.

[142] *Yearbook*, 1931, p. 40.

[143] *Proceedings of the National Conference on Land Utilization*, 1932, p. 243; Department of Agriculture, *Yearbook*, 1933, p. 57.

[144] *Yearbook*, 1932, p. 460; Richard S. Kirkendall, "L. C. Gray and the Supply of Agricultural Land," *Agricultural History*, XXXVII (October 1963), 206–216.

[145] *New Reclamation Era*, XX (October 1929), 153; and XXI (February 1930), 18.

tion.[146] Never were opponents of reclamation able to develop as strong a sectional vote in opposition as its advocates generally marshalled.

In February 1933 attacks upon Reclamation by agricultural authorities were becoming sharp and there was much talk about economy and cutting government appropriations. It appeared that Congress would declare a moratorium upon construction payments, and payments of settlers into the revolving fund, thereby drying up funds available for construction. Mead was driven to desperation by the fear that all work would have to be suspended. He warned the people of the Far West through *New Reclamation Era* that they were up against the keen hostility of many who were clamoring for the "curtailment or the discontinuation of Federal reclamation. Such curtailment would be a national loss, would be suicidal; never was the need for reclamation as great as now when scores of reservoirs were needed, numerous projects were only half built and many others that were privately owned needed rehabilitation." An organization is needed, said Mead, to educate the country as to the importance of reclamation and to correct the misstatements being made about it. He suggested the appointment of a lobbyist in Washington to disseminate information and "to rally the West to repulse attacks" and marshal support. Borrowing from the experience of the irrigation congresses he succeeded in organizing the National Reclamation Association to serve as "an educational influence," to show the East the ruinous scarcity of water in western projects, the vital need for additional reservoirs, that reclamation was self-liquidating, and that complete water basin development instead of the scattered type of projects should be adopted. He made much of the relief reclamation opportunities were providing to dry land farmers being forced off the land by the catastrophic drought. Over and over Mead and the speakers he marshalled denied that reclamation farmers were in competition with staple crop agriculture of the Middle West and the South.[147]

Mead may have thought he could put a final quietus on opposition by agricultural authorities to Federal reclamation activities by appointing an outside group to investigate and report on them. Unfortunately, he selected men whose economic and professional relationships were with reclamation and their interested opinions could carry little weight with independents. What was much more telling was the continued support President Roosevelt gave to the expansion of reclamation, almost from the day he assumed the Presidency.[148]

The Problem of Speculators

Mead continued to be troubled by the fact that private landholders had drawn the most benefit from the building of the reclamation projects and he talked about holding down "the dryland price of these lands . . . to a non-speculative basis," the difference being $11 for the former and $150 for the latter. He cast aside all concern officials earlier had entertained, and indeed Secretary Ray Lyman Wilbur still did, about the generation of hydro-electric

[146] *New Reclamation Era*, XXIII (March, October, 1932), 47–48, 167.

[147] Secretary of the Interior, *Annual Report, 1930*, p. 19; *New Reclamation Era*, XXIV (February 1933), 17–18; XXV (January 1935), 1–5. This journal was the most important and effective organ in inculcating favorable ideas concerning reclamation. *New Reclamation Era*, XLII (February 1956), 4–5.

[148] In the eulogy the Bureau of Reclamation prepared on its past operations for Congress in 1939, 10 quotations of Roosevelt are included, clearly showing that he accepted the view that reclamation did not add to the surplus, and rejected the opposite view entertained by the Department of Agriculture. *S. Doc.*, 76th Cong., 1st sess., Vol. 1, No. 36 (Serial No. 10315), p. 13.

power and its sale as a byproduct of irrigation projects. Mead maintained that all net revenues from such power, after the return of the cost of the power plant and the appurtenant works, should be credited to the Reclamation Fund, which was seriously declining. He thought his agency might experiment with buying all the surplus land within a project area to prevent speculation and to give it complete control over the selection of settlers.[149] Unfortunately, he could not devise a plan by which the privately owned land could be acquired at what he called a nonspeculative price. He also thought the government might experiment with refinancing distressed private irrigation projects with 4 percent loans to put them on a self-supporting basis.

Throughout his entire career as Commissioner of the Bureau of Reclamation Mead tried to meet this problem of the speculator who anticipated the actual farm maker on reclamation projects. After his death, Congress was persuaded to adopt a measure that embodied his hopes. With the approval of President Roosevelt and Secretary Ickes, an act was passed to prevent "speculation in lands in the Columbia Basin prospectively Irrigable by Reason of the Construction of the Grand Coulee Dam Project and to aid Actual Settlers in securing such Lands at the Fair Appraised Value thereof as Arid Land. . . ." (1) It provided that no public funds should be expended in irrigating lands in the Columbia Basin until the privately owned and state lands to be irrigated had been appraised without reference to the proposed construction or irrigation and without increment on account of the prospect of construction; (2) that landowners make contracts with irrigation districts for the repayment of their proper share of construction costs which were to be extended over no more than 40 years; (3) that landowners who had more than 40 acres of irrigable land, if single, and 80 acres if married, were to sell the excess at the appraised price and if they did not they were to be denied all water; (4) owners of excess land must sign recordable contracts wherein they agreed to dispose of their land at the appraised price and give a power of attorney to the Secretary of the Interior to sell for them; if land should be sold for a price in excess of the appraisal, 50 percent of the excess should go to the construction fund and for each month thereafter the amount should be increased by one percent until it reached 99 percent. Excess lands already developed with water were to be exempt from the law.[150] Two important loopholes were left: an excess-land owner could sell to a relative or business associate who could then resell to a third party for any speculative price, and the irrigation water provided in a district might so build up the ground water level as to make it possible to pump from it and thus avoid the heavy water charge. Through such loopholes the excess-lands provisions in some projects were to be made ineffective.

In August 1947, the *Reclamation Era* carried a major article on the history of land speculation in irrigation projects down to 1924 which is worthy of examination. Land speculation, William E. Warne, Assistant Secretary of the Interior, wrote, had come very close to ruining the government reclamation program in the early days. Speculators had bought the land on the gamble that it would sometime be irrigated, and when the land was included in a reclamation project sold their lands to settlers at prices which not only included the value that the government had

[149] Secretary of the Interior, *Annual Report, 1930*, pp. 19–22.

[150] Act of May 27, 1937, 50 Stat., Part 1, p. 208.

added by the construction of irrigation works, but often the value that the settler himself would have to add by patient husbandry over the years. The first homesteader, said Warne, had not uncommonly been a speculator who had no intention of developing the land, who filed his entry, and within a short time sold a relinquishment at as high as $100 an acre. By 1913 the average price of unimproved land within projects had increased by 759 percent and reached as high as 5,400 percent in the Yakima project in Washington and 5,000 percent in the Shoshone project in Wyoming. This was in comparison with an average increase of all farmland in the irrigation states of only 110 percent. More careful selection of entrymen filing for homesteads and legislation resulting from the Fact Finders' report requiring the excess-land owners either to sell or agree to sell their surplus lands at the appraised price "functioned successfully on later projects and have prevented speculation," said Warne.[151]

Hydro-Electric Power, Adjunct of Irrigation

Before the new projects could be brought to completion and the firmly stated policy toward excess lands could be tried out, proposals for a far greater project on the Lower Colorado were attracting attention. Carrying silt that in a year was equal to the amount of soil excavated in building the Panama Canal, the Colorado had proved difficult to contain by levees. It had broken through every barrier raised by man because the silt raised the level of the river and enabled its floodwaters to seek an outlet in the low-lying Imperial Valley, where they did great damage. The only solution seemed to be a high level dam in Boulder Canyon to withhold the floodwaters, which could at the same time harness them for the generation of power and supply both irrigation and potable water to the burgeoning communities of southern California and to potentially rich land in both California and Arizona. The enormous amount of power that could be generated, and for which there was a rapidly growing demand, plus income from the sale of water to municipalities and irrigation districts, promised a certain return that would cover the full cost except for that portion allocated for flood protection. Controlling the turbulent Colorado had been under consideration for a generation but the issue came to a head in the twenties when six of the seven states deeply concerned about the use of Colorado water entered into a compact for the allocation of the water and the power. Arizona's Representatives and Senators were up in arms against the measure because it did not assure that state a satisfactory allocation of water and power or compensation for the loss of taxable resources. Senator Henry F. Ashurst conducted a sustained and successful filibuster in the 1st session of the 70th Congress that prevented action but in the 2d session support for the measure was so overwhelming that opponents let it come to a vote. It passed the Senate by a vote of 65-11 on December 14 and the House on December 18, 1928, by 167-122.[152]

[151] *Reclamation Era*, XXIII (August 1947), 176 ff.

[152] *Cong. Record*, 70th Cong., 2d sess., 277–98, 314–23, 603, 837. Congressional discussion of the Boulder Canyon dam proposal reached a high point in 1928, the year of the St. Francis Dam catastrophe in California involving the loss of more than 400 lives and millions of dollars of property. Senator Ashurst and others used this catastrophe to frighten people into thinking that the building of a dam far larger and holding back 1,000 times more water on no better foundation than that of the St. Francis Dam was a terribly dangerous undertaking. For the St. Francis disaster see Charles F. Outland, *Man-Made Disaster. The Story of the St. Francis Dam* (Glendale, Calif., 1963). Paul L. Kleinsorge, *The Boulder Canyon Project* (Palo Alto, Calif., 1941), p. 269.

The Boulder Canyon Project Act was a great step forward in bringing the Federal government to the support of the economic growth of the Southwest and more particularly into salvaging and expanding both public and private irrigation undertakings. It was the first step in a multiple-purpose project to control the Colorado and minimize flood damage, to provide water for expanded irrigation projects in southern California and Arizona, and to provide cheap power to pump water into the Metropolitan District of southern California and for other domestic and industrial purposes. An all-American canal to bring Colorado River water to the Imperial Valley was to be built which would free farmers in the Imperial Valley from their former dependence upon a canal partly through Mexican territory and would permit the irrigation of an additional 200,000 acres.

Hitherto, in building dams, the generation of power had been more or less incidental to other objectives but beginning with the adoption of the Boulder Canyon project it was to be the means by which other objectives could be attained. Not that the generation of power had attained full standing with the government, even in the years 1928-32, for there was still some feeling that the government should not engage in the generation or sale of power except incidentally. Consequently, it was decided that the government would build the dam, tunnels, powerhouses, and penstocks but the machinery for generating and distributing the power should be installed and operated by lessees. Since the City of Los Angeles, the Metropolitan Water District of southern California, and a power company were to share the power, they individually were to manage the installation and operation of the generators, which seemed an awkward arrangement, but in this way the Department of the Interior and the Bureau of Reclamation avoided the charge of being in the power business. To some officials this seemed essential.[153]

Plight of the Settlers

Meantime, the plight of the settlers on reclamation projects was growing worse, though perhaps no worse than the plight of cotton, wheat, and other single crop farmers, as the agricultural depression of the twenties became accentuated by the general depression beginning in 1929. Despite the liberal extensions of credit, which on one-third of the irrigated land in Federal projects had shifted the payments from annual construction payments to 5 percent of the average crop income, which, at the 1931 rate, would extend repayment over more than 70 years, there was a concerted demand for a moratorium of 3 years. The decline in income of the farmers on Federal irrigation projects showed the dire conditions into which they had fallen. Their annual crop value plummeted from a high of $161,169,880 in 1929 to $119,661,820 in 1930, $73,960,377 in 1931, and $50,158,381 in 1932, and not until the Second World War was it to approach and exceed the figure for 1929. Yet the inexorable expansion of irrigated acreage continued, amounting to 24 percent between 1919 and 1940. Mead was upset by the demand for a moratorium, holding that it would compel the cessation of construction work just at the time when every state in the West was urging the adoption of new projects. He believed many settlers could still continue their payments and that it made no sense to grant a general moratorium; the real need of the settlers was not for a moratorium on construction payments but for some reappraisal of the mortgage debts, taxes, and other obligations of the water

[153] *First and Second Annual Report of Operations Under the Boulder Canyon Project Adjustment Act*, 1944, p. 4. Kleinsorge, *The Boulder Canyon Project* has been very useful.

users which were far greater than their construction obligations to the Federal government. Moreover, farmers outside the projects, especially the drought-stricken farmers who were paying 5 percent on their government loans, would feel too much favor was being shown settlers on government projects.[154] Congress was not yet ready to grant a general moratorium but on April 1, 1932, it did adopt a relief act freeing water users' associations or districts from their 1931 payments and 50 percent of their 1932 payments but requiring 3 percent on the delayed payments. Conditions not improving, in 1933 payments of the remaining 50 percent of water charged for 1932 and for all of 1933 were deferred.[155] In 1934 and again in 1935 water charges for those years were deferred and in 1936 one half were deferred.

It was becoming apparent to Mead that while some water users needed relief from their payments others did not but all were crying for the same treatment and the demand for relief was becoming chronic. He was concerned partly because the stoppage of payments into the revolving fund would reduce the amount available for the completion of projects already under way, and partly because he was proud of the success his Bureau had had in building dams, providing water, and settling people on the land. Mead was really interested in the settler's welfare but he was fearful that their constant appeals for relief would jeopardize the prospects for additional appropriations from Congress or grants from Public Works funds. He could not fail to see the parallel between the situation on the reclamation projects and that of thousands of settlers who had bought public lands on government credit in the early years of the Federal government. Almost at once they had fallen into arrears, besought aid from Congress, won 20 relief acts, but brought the credit system into such disgrace that it was abolished in 1820 and not again revived until the adoption of the Newlands Act in 1902. To Mead the parallel was too close; it was possible to learn from history. In 1936 Congress provided for the appointment of a committee to investigate the economic and financial conditions of the settlers on the various projects to determine their ability to make payments without undue hardship.[156]

Obviously it was no longer possible to maintain that settlers on government irrigation projects could return to the Reclamation Fund the costs of construction, operation, and maintenance. Increasing attention was therefore given in the publicity of the Bureau of Reclamation to the sale of hydro-electric power produced at the dams as the principal source for the payment of construction costs.[157] Equally stressed was the effect that cheap power would have in building up the West by drawing industry, the galvanizing effect upon western growth of the construction of huge dams and the expenditure of hundreds of millions of dollars, the jobs that would be provided, the acceleration all this would give to the growth of population in the semi-arid states, and the expanded

[154] *New Reclamation Era*, XXIII (January 1932), 2–3. Congress had voted an advance of $5 million to the Reclamation Fund on March 3, 1931, to compensate for the slowness with which payments were being made into it and to permit the faster completion of existing projects. 46 Stat., Part 1, p. 1507. Data on the changes in irrigated acreage and the total crop value was provided by Floyd E. Dominy, Commissioner, Bureau of Reclamation, March 7, 1968.

[155] Acts of March 2 and 3, 1933; March 27, 1934; June 13, 1935; and April 14, 1936: 47 Stat., Part 1, pp. 75, 1427; 48 Stat., Part 1, p. 600; 49 Stat., Part 1, p. 337.

[156] 49 Stat., Part 1, p. 1207.

[157] Though the sale of power was one of the most important factors in making possible additional reclamation projects it was still necessary to remember that the primary purpose of the projects was irrigation of the arid lands and that water had to be stored for the growing season.

market these states would provide for the goods of other sections. All these points were brought out in detail by a 72-page brochure prepared by the Bureau, but nothing was said about the necessity of allowing the settlers to postpone payments year after year. Instead, a table was included showing that of $51,200,059 due on the $491,941,664 of construction costs $50,030,571 had been paid. The unwary reader would be quite unaware that payments were far behind the schedule though the tardiness had been forgiven by Congress.[158]

The report of the congressional committee to prepare a more equitable and flexible plan for the repayment of the construction costs of reclamation projects was more realistic. It found that drainage costs not contemplated in the original plans and the replacement of wooden structures by steel and concrete construction had substantially increased the overall costs which water charges had to be made to cover. The delinquent operation and maintenance costs, which the Bureau did not disclose in its report a year later, had further increased the debits against the water users. Interestingly, the committee found the farm units, especially those devoted to general farming, too small. It deplored the wide extent of tenancy which had resulted in careless use of water and mining of the soil, found taxes too high, and recommended that they be assessed on the actual equity of the water user rather than on full land and water value, and that penalties for tax delinquency be reduced. On that old bugbear of the projects, the heavy mortgage indebtedness and interest charges, it had nothing to suggest.

Among the numerous recommendations the committee made, perhaps the most important were those calling for reclassification of the project land, suspension of payments on all lands found to be nonproducing, elimination of joint liability of users in the same project, greater flexibility in the assessment of charges, the granting of discounts, postponement of payments, and close cooperation between state and Federal agencies to improve production of agricultural commodities.[159]

Congress adopted two measures in 1939 to give the desired flexibility in extending the contracts of hard-pressed settlers. The first of these was a straight relief act allowing distressed settlers exemption from payments for water charges for as much as 4 years from 1939 to 1943. The second, called the Reclamation Project Act, to extend their payments, allowed settlers over 40 years in addition to the time the moratorium acts and other relief acts already permitted. New contracts with existing water users could be drawn gearing payments to ability to pay year by year.[160] Under these and other extension acts the average contract life for the repayment of construction charges became 50 years, with payments on 12 projects to extend over 50 to 64 years, on six projects over 65 to 79 years, on four projects from 80 to 99 years and on three projects from 100 to 150 years.[161]

A New Day for the West

A new day began for the West in 1928 with the decision of Congress to finance the Boulder Canyon Project and build the All American Canal. It ultimately cost more than all the reclamation projects undertaken up to 1929. The shrinking Reclama-

[158] "National Irrigation Policy—Its Development and Significance," *S. Doc.*, 76th Cong., 1st sess., Vol. 1, No. 36 (Serial No. 10315), p. 66.

[159] *H. Doc.*, 78th Cong., 3d sess., Vol. 2, No. 673 (Serial No. 10265), p. 1938, *passim.*

[160] 53 Stat., Part 2, pp. 793, 1187.

[161] J. A. Krug and Michael W. Straus, *How Reclamation Pays. A Book of Project Repayment Histories and Payout Schedules with History of Crop Production* (no date, no place), p. vi.

tion Fund of course had to be supplemented by special appropriations for Hoover Dam at Boulder. Further extension of reclamation work was made possible by the decision of President Roosevelt to use Relief and Public Works Administration funds for that purpose. An allotment in 1934 of $103,535,000 was made for the continuation of existing projects and for new ones. Among the new projects were the Caspar-Alcova development on the North Platte in Wyoming and the Grand Coulee project which was expected to provide water for the irrigation of more than a million acres at a cost of $394 million.[162] In 1935 the people of California persuaded the Bureau of Reclamation and the Public Works Administration to undertake the Central Valley project. By 1937 the Commissioner could say that since 1933, $226 million had been made available for construction, $68 million of which had been directly appropriated by Congress out of general Treasury funds and the balance had been allotted from emergency funds. Much larger commitments, however, had been made.

The Central Valley project of California involved the building of one or more dams on the Upper Sacramento and its tributaries to store the surplus water that river had in abundance and the building of canals and pumps to conduct that surplus to the San Joaquin Valley where it was estimated a million or more acres could be made highly productive. Another dam (the Friant) was to be built on the Upper San Joaquin to provide control for distribution purposes. Dams, power plants, canals were estimated to cost $170 million. Long contemplated by the State of California, the project had gotten nowhere because of that state's inability to finance such a large program. When public works and other emergency funds became available for reclamation projects in 1933, the people of the state turned to Washington for the funds, hopeful that the project could remain under the control of the state and subject to its law. California would have preferred a grant from the Public Works Administration. It did not seek a Reconstruction Finance Corporation loan because the 4 percent interest charge on the loan would have been too heavy a burden on the water users. If the project had been constructed by the Army Corps of Engineers it would have been free of the excess-lands provision of the Newlands Act, but the emphasis might then have been upon flood control rather than water for irrigation. Only the Bureau of Reclamation would undertake an integrated, interest-free program that would conserve water for irrigation, prevent floods, guard against the intrusion of salt water into delta lands and at the same time provide large hydro-electric projects that would mean both cheap power for pumping water and revenue that would cover a considerable part of the cost of construction, thereby reducing the burden on water users. Failing in their quest for a Public Works grant, Californians turned wholeheartedly to the Bureau of Reclamation and accepted all its conditions, including the excess-lands provision. Mead was still Commissioner of the Bureau, had frequently reiterated his position concerning the harmful effects of the high land prices at which "speculators" (as he persisted in calling all those who had anticipated settlers in acquiring land within the projects) had sold their tracts to farm makers, and tried to make sure that on future developments land prices would be controlled. He seemed to mean that he intended to en-

[162] Secretary of the Interior, *Annual Report, 1934*, pp. 24 ff. Income from public land sales flowing into the Reclamation Fund reached a low point of $154,567 in 1936, and the moratorium on the payment of construction costs by project settlers had sharply reduced income from that source. *Report, 1936*, p. 53.

force the excess-lands provision, but in the light of previous failure to do so one may wonder. If his successors relaxed this position for a time it could not correctly be claimed later that, as of 1933-36, there was any doubt as to the meaning and relevance of the excess-lands provision for the Central Valley of California or for other reclamation projects.[163]

The Central Valley project was unique in a number of ways. It was an integrated project that comprehended within its scope the entire Sacramento and San Joaquin Valleys and the control and utilization of all the waters. As such it was similar to the project for the development of the Tennessee Valley, though for California there was no regional authority, nor such a broad grant of authority to the Bureau of Reclamation as was given to the TVA. Future plans for construction, beyond those early spelled out, were indefinite and there was to be much bureaucratic fighting about them between Federal agencies. A second unique feature was that within the Central Valley there was no public land for which water could be provided and on which homestead entries could be made. Furthermore, hundreds of thousands of acres were held in large blocks by individuals and by oil, land, irrigation, and cattle companies. As time was to show, they would resist to the last the application of the excess-lands provision. There were also many water rights possessed by companies, irrigation districts, and individuals. It proved to be very complicated to work out the terms on which they might be provided with additional water when needed. And finally there is a vast water resource in the subsoil of the San Joaquin Valley from which irrigators had long been pumping. This had drawn down the water table dangerously but where the surplus water of the Sacramento was made available to irrigators in the southern valley in large volume it began to restore this depleted source and make it possible to pump from it again on an extensive scale. Whether or not persons pumping from this restored level of water, being recreated in a greater or less degree by the Federal reclamation program, should be forced to abide by the excess-lands provision was to be a major issue in the future.

The third big new project made possible in the beginning by Public Works and other congressional appropriations was the spectacular Colorado-Big Thompson undertaking. This called for the construction of a 13-mile tunnel nearly 10 feet in diameter through the spine of the Rockies to bring sufficient Colorado River water to an area already well developed and irrigated from the South Platte. It was essentially a relief proposal for it would not enlarge the irrigated area but would enable farmers to plan their operations with the knowledge that water would be available when needed and in sufficient quantities. The irrigated acreage to be benefited would be only exceeded by that of the Minidoka project in Idaho, the Central Valley project of California, and the Grand Coulee project in Washington.

From the first decade of the 20th century government spending on construction of reclamation projects had given a big impetus to economic activity in the semiarid states, which was largely accelerated by the use of relief and Public Works funds in 1933 and subsequent years. New projects were being undertaken and new investigations were under way to determine the feasibility of additional ones. The West was not willing to wait for funds from the diminishing payments into the revolving fund and in 1936 persuaded Congress to appropriate money from general sources, thereby giving to the humid states an argument some of their representatives used, though not with much effect, that

[163] Robert de Roos, *The Thirsty Land. The Story of the Central Valley Project* (Stanford University Press, 1948), *passim*.

REGULAR ANNUAL APPROPRIATIONS FOR RECLAMATION FROM THE RECLAMATION FUND AND FROM GENERAL FUNDS[a]

Year	Reclamation Fund	General Funds
1936	1,338,100	16,000,000
1937	12,344,600	35,200,000
1938	12,322,600	31,070,000
1939	10,940,600	33,495,000
1940	13,875,600	64,790,000
1941	10,000,600	63,953,000
1942	8,111,000	93,365,031
1943	3,603,960	88,239,710
1944	4,442,775	37,167,800
1945	7,649,800	20,224,200
1946	34,933,150	85,520,500
1947	41,284,953	78,346,135
1948	25,676,750	117,508,258
1949	36,952,264	229,852,953
1950	44,757,214	314,159,777
1951	49,453,100	222,225,700
1952	51,422,347	182,522,686
1953	72,945,450	123,502,541
1954	74,884,496	68,185,164
1955	83,553,419	77,886,892
1956	98,139,950	82,014,050
1957	94,050,700	101,425,022
1958	87,051,950	112,795,068
1959	116,296,083	149,518,452
1960	126,105,142	124,263,108
1961	124,729,000	155,549,705
1962	114,037,100	160,121,100
1963	123,629,000	210,056,600
1964	125,310,000	228,128,200
1965	134,242,000	189,004,500
1966	143,169,000	181,406,000
1967	151,539,000	174,046,000
1968	160,507,000	153,540,000

[a] This table is adapted from *Summary Report of the Commissioner, Bureau of Reclamation*, 1967, pp. 27–31.

their states were paying through general taxes for reclamation development which increasingly competed with them.[164] As the table shows, appropriations from general funds have exceeded those from the Reclamation Fund for every year since 1936 save for 1954-56, 1960 and 1968. It also shows how well the Reclamation Fund has come back from the low point of 1943, the result of oil leasing income, a considerable revival of income from land sales, and from the payments on construction costs.

Post World War II

At the conclusion of the Second World War, when Congress took the brakes off

[164] Francis D. Culkin, Representative from the Oswego district of New York from 1928 to 1942, made an annual address to the House on the many subsidies, hidden or otherwise, in government policy toward reclamation projects, the competition for New York and other eastern farmers they provided, and urged that the program be put on a sound economic basis. He had some support but neither he nor others who thought as he did were able to do more than to reduce appropriations on occasion.

reclamation development in the West, there were 52,848 irrigated farms in Federal projects on which there was a population of 180,413. On other projects receiving Federal water under the Warren Act there were 23,106 farms and on earlier projects receiving supplemental water there were 15,485 farms, or a total of 91,662 farms with a population of 349,856. The total irrigated acreage was 4,162,558, the total crop value for 1945 was $435,184,395, and the average crop value per farm was $4,747. The government-sponsored irrigated farms constituted 1.5 percent of the total farms in the country and the acreage in cultivation constituted 0.3 percent of the acreage in farms. The overall cost of the projects including those designed chiefly for production of power, but excluding the Bonneville Power Dam, came to $993 million, according to the Bureau of Reclamation.[165] The sale of electric power generated at Hoover, Grand Coulee, Shasta, and other dams which in some instances were expected to repay half the cost of construction of the project, and which early supporters of reclamation looked upon dubiously, had become the principal support of reclamation projects.

In any appraisal of reclamation one should give attention to what low-cost electricity has done for the West. The development of the aluminum, air craft, and defense industries which took root in the West, the expansion of agriculture, the movement of population to western cities are all related to and more or less dependent on water and low-cost power from the Colorado, the Columbia, and other rivers that have been made available to them through the irrigation and power projects of the Bureau of Reclamation. Without the water and the power much of this new West, which has meant expanded markets for the rest of the country, could not have come into existence.

The tremendous growth of the arid states during World War II continued thereafter, producing a burgeoning demand for workers, food, power, water, and all that is associated with urban development. Reclamation ceased to be primarily a matter of providing irrigated land for settlers. Although advocates of reclamation in Congress still found it helpful to discuss the number of additional farms a project might make available and the large number of veterans who were applying for an allotment they well knew that settlement on public lands within the new projects was slight compared with the great floods of people migrating to the West, not for land to farm but for jobs and urban residences, and that far more vital to the West than new irrigated farms were defense contracts, great power installations, and water for industrial and domestic use.

The number of new farm openings being made available with the new project were few and the total number of farm units offered to qualified applicants could not have justified the large expenditures being made. Annually, the Commissioner included in his report the number of farm units being opened to settlers for the first time and equally regularly totalled those since the close of World War II. From 1946 through 1958 there were 2,842 farm openings with a combined acreage of 264,240. These were either public lands on which homestead applications could be filed or land which the Bureau had purchased to prevent a rapid rise in price when water was provided, and was now selling at its appraised price. The largest number of farm units thus opened to settlement was in Washington where 1,238 were opened in the Columbia Basin and 56 were opened in Yakima project; next came

[165] Compare this figure as given in the report of the Bureau in Secretary of the Interior, *Annual Report, 1946*, p. 115, with the appropriations in the table given above.

LAND OPENINGS ON RECLAMATION PROJECTS[a]

Year	Number		Acreage
	Openings	Farm Units	
1946		157	
1947	2	51	
1948	5	210	18,575
1949	3	296/337/	30,728/35,197/
1950	4	128	12,830
1951		106	4,257
1952		201	12,351
1953		263	18,292
1954		339	34,126
1955	4	243	23,514
1956	4	235	26,898
1957	5	290	33,482
1958	2	51	7,656
1959	1	31	3,223
1960		39	
1961		26	
1962	1	18	

[a] Compiled from Bureau of Reclamation *Reports*.

Idaho with 764 new farm units, Wyoming with 383, the Klamath project in Oregon and California with 216, and the balance scattered. During the period when these 2,842 farm units were being opened to settlers there was spent by the Bureau of Reclamation for new and expanded projects a sum equal to $917,000 for each of the units, while in these same years the Bureau had received from power sales $383 million. This shows how little the expectations of increased numbers of farm users of water actually entered into the calculations of the planners.[166]

The table of original entries of reclamation homesteads does not show a close correlation between new openings and homestead applications:

Much was made in the discussions in Congress of providing opportunities for veterans to take up irrigated land for farm homes, and the number of requests for applications and the number of persons, including many veterans who did apply is astonishingly large. For the 2,842 farm units a total of 134,620 applications were presented. The Legislative Reference Service authors of "Reclamation-Accomplishments and Contributions" rightly cite this as evidence that "The lure of homestead in the West is still strong." The number who could qualify, however, were many fewer, for up to $5,000 in cash in addition to experience in farming, and a will to work and work hard and not just to establish a negotiable right they might later sell, were among the requirements to assure success.

The Bureau could not forget its early experience with settlers, many of whom were not actual farm makers but people who thought the homestead on which they filed would be so increased in value when the government brought water to it as to give them a quick profit. The result had been a high rate of turnover of farms, inflation

[166] "Reclamation-Accomplishments and Contributions," Committee Print, No. 1, House Committee on Interior and Insular Affairs, 86th Cong., 1st sess., 1959, pp. 21–23.

ORIGINAL AND FINAL HOMESTEAD ENTRIES[a]

Year	Original	Final
1946	8	158
1947	183	120
1948	199	52
1949	193	77
1950	103	152
1951	42	339
1952	2	166
1953	35	142
1954	72	117
1955	92	134
1956	106	165
1957	192	209
1958	151	207
1959	46	178
1960	3	213
1961	2	207
1962	12	90
1963	2	70
1964		78
1965	1	36
1966		46

[a] Information provided by Karl Landstrom of the Office of the Secretary of the Interior.

in values, with the land too high in price for new settlers to carry with all the other charges. "It took three generations to develop a new irrigated farm," was commonly said of that early period. With greater care in selecting occupants of its farm units the Bureau was having better success in retaining people on the land and in encouraging them to put their full energies into farm making. A study it made in 1953 of 751 farm units which had been settled from 2 to 6 years, mostly by veterans (87 percent), brought out that 112 or 13 percent had changed hands, whereas on farms in the Mountain and Pacific States outside the reclamation projects the rate of turnover had been 25 percent. The reasons for selling out and leaving the projects are instructive: 81 sold at a profit; nine were defeated in their effort to make a success of irrigation farming, six left because of personality issues, six because of financial difficulties, four because of title difficulties over contested claims.[167]

At the conclusion of the World War II there were fears that the arid states would have a big surplus of power for which there would be no market. This quickly proved groundless. Instead, power shortages occurred when rainfall was light. To meet the continually increasing demand for water and power in the Southwest to serve its expanding industry and growing population, the West asked for further large reclamation projects principally for power and water conservation but still with an eye to the possibility of creating a few more farms. Among the new projects was the proposal to divert a part of the flow of the Trinity River through a tunnel in the mountains of northern California into the Sacramento where it would substantially enlarge the amount of water for irrigating the arid lands of the San Joaquin Valley. Authorized as part of the Central Valley project in 1955 at an estimated cost of $219,282,000, it was thought capable of providing more than a million acre-feet of water and between 233,000 and 330,000 kilowatts of electricity.[168]

Larger in its scope than any previous measure was the monumental Upper Colorado River Basin project adopted on April 11, 1956. Its object was to make available to the four states of the Upper Basin those rights to the water of the Colorado that were set forth and assured by the seven-state Colorado River Compact of 1922. The act provided for the construction of a giant dam at Glen Canyon, only second

[167] *Reclamation Era*, XXXIX (April 1953), 79–82. In addition to the requirement for capital and more careful scrutiny of applicants the account stresses the aid given settlers by professional experts in irrigation farming representing the Federal, state, and county governments.

[168] Act of Aug. 12, 1955, and of July 2, 1956, 69 Stat. 719; and 70 Stat. 478; *H. Doc.*, 84th Cong., 2d sess., Vol. 3, No. 281 (Serial No. 11923), p. iii.

to Hoover Dam in height and perhaps third in generation of power, three other high dams in New Mexico and Utah, and 10 other projects including dams, power plants and transmission lines that would make possible the irrigation of considerable land. It gave priority for investigation to some 23 other projects. The cost of producing power was to be repaid to the Federal Treasury through revenue from the sale of energy and the excess revenue was to be allocated to the four Upper Basin States according to a percentage basis defined in the measure. Construction costs other than for power and municipal water were to be repaid from water charges spread over 50 years. The sum of $760 million was authorized for the Upper Colorado Basin project.[169]

As Congress pushed ahead in opening up new projects it was sharpening political and economic issues. Advocates of reclamation development had long since learned that the generation and sale of electric power could be made to carry much of the cost of projects which were not otherwise feasible or justified. In their search for promising hydro-electric sites they came into conflict with private interests and in one major instance were denied the site in favor of a private competitor.

Equally divisive and less easy of compromise was the problem of the excess-lands provision in the reclamation law. It has been seen that the Bureau of Reclamation gave little attention in its publications to efforts it may have made to enforce the provision. This is somewhat difficult to understand in view of the emphasis the Bureau continued to place on the number of new farms that were being opened to settlement. In any case, in hearings before the subcommittee of the Senate Committee on Public Lands in 1947, on a bill exempting certain projects from the land-limitation provisions of the Federal reclamation laws, Senator Arthur V. Watkins of Utah brought out that every user of Federal water in his state had to conform to the excess-land law by signing a contract, before he received water, to provide for the disposal of his excess lands, either by his own action or by the government. In the Orland District of the Sacramento Valley in California, one of the first projects to be undertaken, there had been complete compliance with the acreage limitation provision. Well before a number of projects were ready for water, the Bureau of Reclamation could report that in the Owyhee area 12,500 acres held by two land companies had been sold at the appraised price of slightly less than $10 an acre. When state lands had been sold for $25 an acre, one half of the surplus over the appraised value had been paid on construction charges as the Omnibus Adjustment Act of 1926 required. In the Deschutes project in Oregon 98 percent of the excess lands were included in recordable contracts providing that they must be sold within 10 years at the appraised price, on the Minidoka project from 94 to 100 percent of the excess land was in similar contracts and on the largest of them all, the Grand Coulee project, 4,659 recordable contracts covering 988,950 acres had been signed. This was 79 percent of the acreage and 67 percent of the owners.[170] On

[169] 70 Stat. 105–111.

[170] "Exemption of Certain Projects from Land-Limitation Provisions of Federal Reclamation Laws," *Hearings before a Subcommittee of the Commission of Public Lands*, United States Senate, 1947, pp. 213–17. The data given by Assistant Commissioner of Reclamation William A. Warne is not complete, for attention at the hearing was diverted to other questions. Warne did say that some undeveloped excess land in the Central Valley project of California would receive water. He also offered evidence showing that tenancy in the Boise project in Idaho was not being used to get around the excess-lands provision.

the other hand the 160-acre limitation appears to have been ignored in the Salt River Valley of Arizona, at least for years after the completion of the Roosevelt Dam.[171]

Charges and countercharges concerning the efforts of the Department of the Interior and the Bureau of Reclamation to apply the excess-lands requirement to the Central Valley led the Senate Committee on Interior and Insular Affairs to ask the Secretary of the Interior to make a study of the application of land limitation to water users in Federal projects. We may summarize the results of the study. A decision of the Secretary of the Interior of February 24, 1933, declared that users of Colorado water provided to the Imperial Valley by the Boulder Canyon project and the All American Canal were not subject to land limitation. The report shows that between 1944 and 1960 the number of small farms of 10 to 499 acres in the Imperial Valley had shrunk from 2,748 to 1,029 whereas those of 500 to 999 acres had increased from 119 to 155 and those of 1,000 and more had increased from 65 to 207. There were six holdings of 5,000 to 9,000 acres.[172] Beginning in 1938, Congress adopted a series of measures exempting owners of irrigated acreage in excess of 160 or 320 acres from land limitation in the Colorado Big Thompson project in 1938, the Truckee River and Humboldt projects in Nevada and the Owl Creek Missouri River Basin project in Wyoming in 1940, the San Luis project in Colorado in 1952, and the Santa Maria project in California in 1954. By a number of other measures applicable to specific projects some flexibility was granted in determining the size and applicability of land limitation.[173]

It is in California where the battle over the application of the excess-lands provision has been most vigorously fought. Complicating the situation there is the fact that irrigation water from Federal projects in the Valley will recharge the ground level of water and make it possible for nonparticipating excess-land owners to pump such supplies as they need.[174]

Notwithstanding clashing interests over power, transmission lines, excess lands, Colorado River water, Columbia River water, the intrusion of construction projects into national parks and monuments and other areas of superlative natural beauty and interest, the appointment of engineers or social scientists as Commissioners of the Bureau of Reclamation, methods of bookkeeping, the use of government funds for "propaganda" favorable to reclamation, and ownership rights of ground water, the reclamation program has gone far to remake and develop the 11 western states. The population of these semi-arid states increased from 1900 to 1960 by nearly 900 percent whereas that of the United States advanced by 133 percent. Twenty-three of the country's 130 largest cities including the 3d, 12th, 18th, and 19th were located in these states. Low-cost electric power for pumping, industrial and domestic purposes and water for industrial, domestic, and irrigation purposes

[171] Paul S. Taylor, "The 160-Acre Water Limitation and the Water Resources Commission," *Western Political Quarterly*, III (September 1950), 439–40.

[172] "Acreage Limitation Policy," Committee Print, Senate Committee on Interior and Insular Affairs, 1964, pp. 25, 54.

[173] *Ibid.*, *passim*.

[174] Literature on the clashing interests in California is extensive, with numerous hearings of congressional committees and extensive periodical literature. For summaries of the earlier and later problem see Mary Montgomery and Marion Clawson, *History of Legislation and Policy Formation of the Central Valley Project* (Berkeley, 1946), *passim*; Paul S. Taylor, "Excess Land Law; Secretary's Decision. A Study in Administration of Federal-State Relations," *University of California Law Review* (January 1962), pp. 1 ff.; Sheridan Downey, *They Would Rule the Valley* (San Francisco, 1947).

provided by the great dams, canals, and powerhouses of the Bureau of Reclamation were among the chief factors making for this rapid growth. At a cost of $6,738,000,000 water was being provided to 8 million acres, the crop yield of which was $1,557,000,000 in 1965; 1,675,000 acre-feet of water were delivered for domestic and industrial uses to cities and towns; the sale of electric power reached $115,483,000.[175] The early objective of irrigating 100 million acres had not and could never be achieved. However, the other dreams of those who contemplated what reclamation could do for the West had been far surpassed. Reclamation had long since gone beyond the limited concept of irrigating dry farmland to the multiple-purpose concept that included providing water for the great cities, power for their homes and industries, recreation at the many reservoirs, and flood control to stay the damage of an angry nature.

Yet the contribution of reclamation to agriculture has not been small. A summary of 1957 shows 50,845 farms either receiving or eligible to receive full water service and 50,554 receiving supplementary water service. Together, this was almost twice the number of farms in all New England. To this may be added 17,079 part-time farms getting full water service and 7,702 getting supplementary water service. On these full and part-time farms lived 486,000 people. Interesting also is the fact that the average size for the full-time farms was 72 acres.[176] It should be added that while the Bureau of Reclamation was providing water for nearly 9 million acres of land some 24 million acres were being irrigated by a combination of public, semi-public, and private agencies.

For 1966 the Bureau of Reclamation reported 134,000 family farm units with an irrigable acreage of 8,623,760 representing 564,000 farm people, all this in 17 states west of the Louisiana-Minnesota tier of states. These same 17 states had enjoyed a growth of 261 percent since the adoption of the Reclamation Act whereas the United States as a whole had a growth of 135 percent. Few policies concerned with public lands have been as popular, as dynamic, or as imaginative. None except free homesteads has produced such striking results as reclamation. Though it has drawn criticism at times and some representatives of other regions not directly benefited have growled at its cost and the competition it has created for farms elsewhere, reclamation has been the decisive factor in making possible the growth of hundreds of western communities and in accelerating the rate of development of the western third of the United States far beyond that of other sections in the 20th century.

Reclamation Homestead Entries

It has not been possible to separate the original reclamation homestead entries from all other original homestead entries for the years from 1905 to 1915, except for 1907, but statistics are available for final homestead entries for 1913-15 which indicate considerable settlement on Federal irrigation projects in the previous years.

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[175] The statistics of water provided, acreage watered, and crop yield and income from power sales apply to reclamation and related projects in the 11 semi-arid states and North and South Dakota, Nebraska, Kansas, Oklahoma, and Texas, though much the larger part of all relate to the 11 states. *Summary Report of the Commissioner, Bureau of Reclamation*, 1966, Statistical Appendix, Parts 1, 2, and 3.

[176] "Reclamation-Accomplishments and Contributions," p. 21. The compilers did not provide any information concerning the number of farms operated by other than owners nor what concentration of ownership there may have been, nor did they provide any data concerning the enforcement of the excess-land limitations though they did show the steps taken by Congress to free certain areas and lands from the limitations. It should be added that the average size of the part time farms was only 12 acres, many being only 2 or 3 acres.

Since many of the projects contained very little Federal land that was open to homestead, some contained none, the tabulation of homestead entries is not as useful an index of the significance of Federal reclamation as the data of irrigated land served by the Bureau of Reclamation projects. The tabulation by states of irrigated land served by the Bureau of Reclamation projects and the total acreage of irrigated land as of 1964 are here given together, provided through the kindness of Karl Landstrom of the Office of the Secretary, Department of the Interior.

IRRIGATED LAND STATISTICS, 1964

State	Irrigated Lands Served by Bureau of Reclamation Projects	Total Irrigated Acres Census of Agriculture
Arizona	492,897	1,125,376
California	2,308,167	7,598,698
Colorado	967,564	2,690,018
Idaho	1,618,533	2,801,500
Kansas	63,013	1,004,210
Montana	340,407	1,893,360
Nebraska	426,014	2,169,317
Nevada	14,326	824,511
New Mexico	308,651	812,723
North Dakota	30,302	50,548
Oklahoma	47,260	302,081
Oregon	484,906	1,607,659
South Dakota	78,192	130,050
Texas	105,064	6,384,963
Utah	370,895	1,092,270
Washington	943,084	1,149,842
Wyoming	310,288	1,571,192
Totals	9,036,563	33,208,318

CHAPTER XXIII

Legal Aspects of Mineral Resources Exploitation

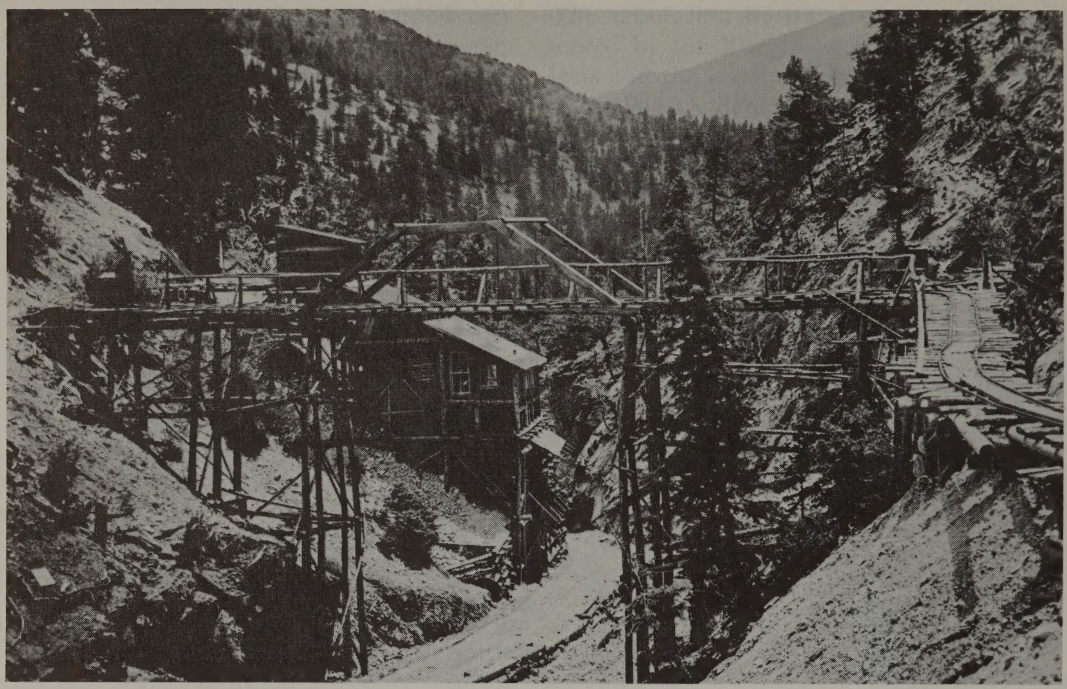
by

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AUTHOR'S NOTE.—*I am overwhelmed by the amount of historical material on the western frontier which continues to come off the presses. In preparing this study I have too often felt the temptation to wander off irretrievably into the fascinating history of the frontier era. But—this cannot be an appraisal of Frederick Jackson Turner's theories of the frontier, or of the economic history of copper in Montana, or even a retelling of life in the mining camps with their hurdy-gurdy houses and jumping frogs. Instead, I have reluctantly confined myself in Part 1 to an appraisal of the policies of the Federal government up to 1872 with respect to the exploitation of solid mineral resources on the public domain. Part 2 considers the history of the disposition of coal and petroleum lands, while Part 3 deals with the effect of withdrawal policies on minerals and the contemporary mining scene in general.*

Thus, although this study is primarily "legal" history, I cannot begin without acknowledging a debt to historians whose objectives have been much broader than mine and from whom I have learned a great deal about the mining frontier. Jackson, Paul, Wright, Gates, and Greever—to name but a few—have admirably performed the task of examining original source materials which are not available to me. Their observations are truly the backbone of any discussion of western mining law.

R.W.S.



Molybdenum Mining 35 Years Ago

American Mining Congress

Part 1
Solid Mineral Resources Policy to 1872

In 1568, it was apparently not too difficult to convince "all" the Justices of England and the Barons of the Exchequer that ownership of the royal mines (gold and silver) extended to privately owned land in which these minerals might be discovered.[1] Blackstone suggests that this valuable prerogative was actually based on the Crown's exclusive authority to coin money.[2] The Royal Solicitor went further, however, and ventured the argument that it might also stem from the fact that there was more than slight similarity between the excellency of the King and the alluring qualities of gold and silver.[3] As an afterthought, he suggested that royal ownership might also be necessary to provide for the public

[1] The Case of Mines, 1 Plowden, 310, 75 Eng. Rep. 472 (1568). Lindley commented that there seems to be no authentic record in England that any mine containing the precious metals in a pure state has ever been discovered. 1 LINDLEY, MINES 7 (3d ed. 1914). This, however, is incorrect although such deposits were few and small.

[2] 1 BLACKSTONE, COMMENTARIES *294.

[3] With disarming candor, the Solicitor suggested: "And the common law, which is founded upon reason, appropriates every thing to the persons whom it best suits, as common and trivial things to the common people, things of more worth to persons in a higher and superior class, and things most excellent to those persons who excel all others; and because gold and silver are the most excellent things which the soil contains, the law has appointed them (as in reason it ought) to the person who is most excellent, and that is the King." The Case of Mines, 1 Plowden, 310, 315, 75 Eng. Rep. 472, 479 (1568).

welfare. The renowned case concluded with the dictum that this royal prerogative could in fact be separated from the Crown by express grant.

Thus it came about that most of the early American colonial charters contained outright grants of mineral land to the adventurers (as they were called in the charters) on the new continent. The royal largesse was restricted somewhat, however, by an accompanying perpetual reservation of a rental of one-fifth part of all gold and silver[4] and, in Virginia, an additional one-fifteenth part of all copper mined.[5] Restoration scholars may perhaps be able to explain what prompted Charles II years later to grant to the Duke of York all mineral lands in return for an annual rental of 40 beaver skins.[6] This grandiose gesture has prompted the State of New York from 1786 to this day to assert ownership of gold and silver found in private property.[7] The validity of this position seems not to have been tested.[8] In the case of charters which contained rental reservations, it has remained unsettled as to whether the Colonies (and eventually the states) can assert the right to the royalty either as assignees of the Crown or by virtue of the Treaty of Peace.[9] Although there was considerable variation in the way in which the new states disposed of their public lands,[10] there is little doubt that at least some valuable mineral land passed into private ownership shortly after the Revolution. When the Original Colonies ceded to the Federal government their claims to land west of the Alleghenies[11] and as the United States later obtained its vast acquisitions in the Far West, a great public domain emerged with undreamed of wealth in mineral resources. It was there, of course, that the Federal mining law has had its principal application.

The Continental Congress at an early date felt constrained to take up the problem of the disposition of the public lands. Although Thomas Jefferson's influence in an early report was apparent, the final plan reflected for the most part the earlier experience of the Colonies, particularly Massachusetts.[12] The famous Land Ordinance of May 20, 1785,[13] was to become the foundation of the American land system, and its basic principles—particularly the system of rectangular surveys—have continued in operation to the present day. It is natural that the concept of the royal mines found its way into the new Ordinance: "There shall be reserved ... one-third part of all gold, silver, lead and copper mines, to be sold, or otherwise disposed of as Congress shall hereafter direct."

It is pure speculation whether this reservation reflected any definite national policy at all with respect to the mines. It can hardly have been intended to prevent monopoly or speculation because only a third of the mines was reserved, and the reserva-

[4] See, *e.g.*, THORPE, AMERICAN CHARTERS, CONSTITUTIONS AND ORGANIC LAWS (1909) vol. 3, 1834 (Massachusetts); vol. 6, 3037 (Pennsylvania); vol. 7, 3786 (Virginia). See also Note, 16 ST. LOUIS L. REV. 245 (1931).

[5] 7 THORPE, *supra* note 4 at 3786.

[6] 3 THORPE, *supra* note 4 at 1638 (Grant of the Province of Maine, 1664).

[7] NEW YORK PUBLIC LAND LAW § 81. The state's claim extends to "all deposits of gold and silver in or upon private lands and lands belonging to the state heretofore or hereafter discovered within this state." With amendments as late as 1962, the code provides for granting permits to mine, royalties, etc.

[8] BLANCHARD AND WEEKS, THE LAW OF MINES, MINERALS AND MINERAL WATER RIGHTS 87 (1877).

[9] *Id.* at 89.

[10] See Treat, *Origin of the National Land System under the Confederation*, 1 AM. HIST. ASSN. REP. 231-39 (1905), reprinted in THE PUBLIC LANDS: STUDIES IN THE HISTORY OF THE PUBLIC DOMAIN (Carstensen ed. 1963).

[11] TREAT, THE NATIONAL LAND SYSTEM 1-15 (1910).

[12] *Id.*

[13] 4 JOURNALS OF THE AMERICAN CONGRESS 520-22 (1785).

tion, in any event, was only a temporary one. Also, speculation in Federal lands was hardly regarded as objectionable at the time.[14] The reservation of lead might conceivably have been for military purposes, although at this time there seemed to be no immediate threat to the security of the new Nation. Perhaps it is more accurate to say that the mines were looked upon as a source of potential revenue.[15] This would be natural for a government recovering from the ravages of war. And, yet, only a small fraction of the mines was in fact reserved. In retrospect, the emphasis on precious metals may also seem strange, but quite obviously these alone were thought to be of value. This fact prompted the Supreme Court over a hundred years later to observe, in a discussion of the Ordinance, that "... non-precious metals have probably contributed as much or more to the general wealth of the country."[16]

Since the Ordinance was not re-enacted after the dissolution of the Continental Congress, the government's early mineral policy died a natural death. The new Congress did not concern itself with the disposition of the public domain except for three statutes in 1796, 1800, and 1804,[17] none of which considered the mineral lands. The general power of Congress to dispose of its property without restriction was, of course, established in the new Constitution.[18]

An Experiment in Leasing: The Lead Mines 1807-1846

In 1807[19] Congress passed a public land act which dealt primarily with land lying between the United States Military Tract and the Connecticut Reserve.[20] The House Committee on Public Lands inserted in the final draft a special provision (Section 5) authorizing leasing of the lead mines in the Indiana Territory. Section 5 is not exactly reminiscent of modern leasing legislation. After reserving known lead mines (and contiguous lands) from future disposal, the act with no more detail simply empowered the President to "lease any lead mine ... for a term not exceeding five years." Future grants of land in the territory were also prospectively declared void if known lead deposits existed prior to the sale.

Although the act was intended primarily as a revenue measure, the political uncertainties inherent in an age which housed both Napoleon and a hostile England may have prompted legislation to insure an adequate supply of lead for ordnance requirements.[21] The reservation was apparently thought to be self-executing, for no Executive order was ever issued setting aside specific lands. What is most astonishing about the act is that there was simply no plan for the administration of a leasing system. The contents of the leases were not specified. There was not even a hint as to the royalty which the government might expect. Leasing was thus off to a most inauspicious beginning. The Missouri lead mines were soon leased, however, and that experiment ended in disaster. By 1829, Congress abandoned leasing in Missouri (by then a state) and authorized the sale of the mines.[22] It has been established that the Federal leasing law produced widespread resentment

[14] WRIGHT, THE GALENA LEAD DISTRICT: FEDERAL POLICY AND PRACTICE 1824-1847 5 (1966).

[15] *Id.* at 6.

[16] Northern Pac. Ry. Co. v. Soderberg, 188 U.S. 526, 531 (1903).

[17] 1 STAT. 464 (1796); 2 STAT. 73 (1800); 2 STAT. 277 (1804).

[18] U.S. CONST. art. IV, § 3, cl. 2.

[19] 2 STAT. 448 (1807).

[20] The Connecticut Reserve consisted of land in Ohio which was not included in the state's original cession to the Federal government of her colonial charter claims. It was eventually ceded in 1800. See TREAT, *supra* note 11 at 319-25. The United States Military District is described on 239-43.

[21] See WRIGHT, *supra* note 14 at 8 (1966).

[22] 4 STAT. 364 (1829).



Potash Mine Adjoining the Colorado River at Moab, Utah
Engineering and Mining Journal

in Missouri.[23] This was due in part to the fact that much of the land was already subject to early French and Spanish land grants, and the government lessees resented having to pay a royalty in order to mine when their neighbors owned their land in fee. Certainly the inadequate administration of the mines themselves was partly to blame. There were simply not enough Federal land agents in the area to protect the government lessees from claimants under the old grants who disputed rights to possession.

History cannot pass judgment on the leasing program solely on the basis of the Missouri experiment, however. A much more encouraging report comes from the lead mines in the Upper Mississippi Valley where leasing was not abandoned by the government until 1846.[24] James E. Wright has produced the only in-depth study of the leasing program in that area. In his recent and thoroughly readable book, *The Galena Lead District: Federal Policy and Practice 1824-1847*,[25] Mr. Wright has dis-

[23] Swartzlow, *The Early History of Lead Mining in Missouri*, 28 MISSOURI HIST. REV. 184 (1934), vol. 29, pp. 27, 109, 195; Abramoske, *Early History of Lead Mining in Missouri*, 54 MISSOURI HIST. REV. 29 (1959).

[24] 9 STAT. 37 (1846).

[25] WRIGHT, *supra* note 14.

puted the common assertion of historians that leasing eventually failed simply because the cost of administration greatly exceeded the royalties received by the Federal government. It is true that President Polk went on record to that effect in his first annual message to Congress on December 2, 1845,[26] in which he advocted the abandonment of leasing in the Upper Mississippi mines. Mr. Wright has demonstrated that the reasons for the failure are a great deal more complicated. What follows is, I hope, a fairly accurate (although necessarily brief) summary of Wright's findings. They are worth stating in any history of American mining law because they shed an entirely new light on the early leasing period.

By the mid-1820's, miners (including many from Missouri) began to flock into an area in southwestern Wisconsin and northwestern Illinois known variously as the Upper Mississippi, Galena, or Fever River mines. The public mines, by this time, were under the Ordnance Bureau of the War Department which had designated Lt. Martin Thomas as supervisor. The distinctive thing about the Thomas regime was that specific regulations governing mining were put into effect. The legislative powers of the supervisor seem unbelievable today. They ranged from prescribing the terms of the leases to price-fixing. Thomas obtained permission to abandon the practice, originally advocated by President Jefferson, of collecting the customary 10 percent royalty on all metal produced in pure lead, a highly unrealistic requirement since few miners could afford their own smelters. Instead, he advocated government-licensed smelters, to whom miners (operating under digging permits) were required to sell their ore. Both the smelters and the mines were regulated, with the smelters paying the royalty in pure lead directly to the government. The program was successful from the standpoint of the government as well as the miners and smelters. Wright estimates that by June 1829, 4,253 digging permits and 52 smelter licenses had been issued.[27] It is true that at times Lt. Thomas felt constrained to take rather extreme measures to settle differences between the miners and the smelters. For one thing, the latter had a government-protected buyers' market which enabled them to set ore prices, knowing full well that the miners could sell to no one else. To placate the miners, Lt. Thomas peremptorily stabilized the price which the smelters were required to pay the miners for their ore. Up to 1828, production steadily increased, and there was every indication that the government received full payment of the rentals owed by the smelters.[28]

After 1829, the government leasing program deteriorated rapidly. Numerous factors combined to undermine the system. In the first place, the area suffered from a depression. Because of overproduction, the price of lead declined seriously in the years that followed, while food prices skyrocketed. Agitation for the sale of nonmineral land in the area so that agricultural production might be increased was inevitable. In 1834, Congress finally opened these lands for entry.[29] Miners also petitioned for and received a reduction in the royalty to 6 percent, which only augmented the already glutted lead market. Because of the gen-

[26] 4 MESSAGES AND PAPERS OF THE PRESIDENTS 410 (Richardson ed. 1897): "The present system of managing the mineral lands of the United States is believed to be radically defective. . . . The system of granting leases has proved to be ... unprofitable to the Government. . . . According to the official records, the amount of rents received by the Government for the years 1841, 1842, 1843, and 1844 was $6,354.74, while the expenses of the system during the same period, including salaries of superintendents, agents, clerks, and incidental expenses, were $26,111.11, the income being less than one-fourth of the expenses."

[27] WRIGHT, *supra* note 14 at 17-18.

[28] *Id.* at 32.

[29] 4 STAT. 686 (1834).

eral laxness in the administration of the leasing law by Thomas' successor, Thomas Legate, miners and smelters alike became disenchanted. Wright estimates that smelters were in arrears in rentals in the amount of 124,736 pounds of lead in 1830, 255,651 pounds in 1832, and 493,313 pounds in 1835.[30] Rentals were collected for only one year during the period 1836-40, and that was only a nominal amount. Actual production of lead was more than four times the amount reported to the War Department. During this period, lead production soared to an estimated 89 million pounds. By 1833, the miners too began to resent the requirement of a digging license, and between 1833 and 1835 only about 145 miners took out permits. After 1836, they apparently mined in complete disregard of the leasing law. Legate himself openly opposed the leasing system throughout his tenure, brazenly advocating outright sale of the mines.

The fatal blow to government ownership of the mines came when Congress in 1834 created a new land office for the western half of the Wisconsin Territory. Although the President himself directed that mineral lands be reserved from entry, at least three-fourths of the public mineral lands in this area (Illinois was not included, of course) passed into private ownership in the 6 years or so which followed. There seems little doubt but that John Sheldon, register of the land office, was guilty of gross fraud in permitting both local and eastern speculators to grab valuable mineral properties. This was accomplished with the acquiescence of the superintendent of the mines (Legate) who himself was guilty of speculating in mineral land. Although it is true that the land office district included as much as 9 million acres of land and although mineralogical competence had not advanced at this time to the point where mineral lands could be easily segregated, still the evidence is overwhelming that neither Sheldon nor Legate made any serious effort to stop the demise of the leasing system. By 1840, when public ownership was virtually a thing of the past, the miners themselves discovered that they were no better off under private ownership. Private landowners who leased their lands for mining increased royalties from 6 percent to as much as 33⅓ percent. The miners were not adequately represented in the territorial legislature which, controlled as it was by the large landowners, repeatedly memorialized Congress to dispose of the entire area in the interest of rapid settlement. This does not necessarily mean that the majority of the people favored public ownership, although it is quite clear that the miners themselves did. Changes in population groups during the 1830's produced an electorate more interested in agriculture than mining.

During the later years of the leasing system, two cases from the Upper Mississippi mines came before the Supreme Court. In the first, *United States v. Gratiot*,[31] the defendants were sued on a penal bond executed as part of a smelter's license from the government. Thomas Hart Benton, long opposed to leasing in Missouri, argued for the defendants that Congress had no constitutional power to authorize leasing of mineral lands, and that, in any event, the smelter's license was not a "lease" within the meaning of the 1807 Act. The court unanimously held that the phrase "power to dispose of" in the property clause of the Federal Constitution confers upon Congress the authority to lease as well as to sell the public lands. Indeed, the whole foundation of territorial government was said to rest upon the assumption that congressional power over the public domain was in fact unlimited. The 1807 Act was, therefore, upheld. The Court also held (1) that the smelter's license was a "lease"

[30] WRIGHT, *supra* note 14 at 39.

[31] 14 Peters (U.S.) 526 (1840).

within the meaning of the act since it was an essential phase of the whole lead-mining process and (2) that the 5-year limitation on leases in the 1807 Act did not prevent renewals from time to time.

In the second case, *United States v. Gear*,[32] the government contended that the defendant had knowingly entered mineral land without a digging permit. Damages for trespass as well as an injunction against waste were requested. Gear's defense was that the 1807 Act had been repealed by implication by several public land acts, particularly the Law of 1834,[33] with the result that the land was subject to preemption. The Court, three justices dissenting, found no basis for the contention that the 1807 Act had been repealed and overruled the defendant's demurrer. Apart from the issue of repeal by implication, the *Gear* case is significant as the first decision to establish that unauthorized mining on the public domain is an actionable trespass. It is inticularly the law of 1834,[33] with the result only a few years later as a precedent in the Far West.

Although leasing might have been successful in the lead mines, a number of factors contributed to its ultimate collapse. In the first place, the failure of the Federal government to provide adequate administration of the program was apparent at all stages. Second, the illegal transfer of a large portion of the Wisconsin mines to private ownership as agricultural land produced an unfortunate land ownership pattern. Third, the prolonged litigation in the *Gear* case left years of uncertainty as to the validity of the leasing system after the 1834 Act.

Finally on July 11, 1846,[34] Congress authorized the sale of the mines in the Upper Mississippi Valley and in Arkansas at public auction at $2.50 per acre during the first year and thereafter subject to preemption rights. Previously leased properties were not to be sold until after the expiration of the leases.

The Period of Sale

Except for the 1829 Act which authorized the sale of the Missouri lead mines,[35] the policy of the Federal government during the period 1785-1846 had been to administer land which contained salines or known mines on a basis quite different from the treatment of agricultural lands. This is evidenced by the great variety of public land acts which reserved mineral lands from sale under the general laws and which denied preemption rights to occupants of mineral lands. A change in this policy began with the 1846 Act which authorized the sale of the lead mines in Illinois and Wisconsin.[36] This was followed by two statutes in 1847 creating the Lake Superior Land District in northern Michigan[37] and the Chippewa Land District in northern Wisconsin.[38] In these statutes, jurisdiction over the public lands was transferred from the War Department to the Treasury. The latter was instructed to make a geological examination and survey of the public lands in these areas. The President was authorized to "expose for sale" at no less than $5.00 per acre lands reported to the General Land Office to contain "copper, lead, or other valuable ores . . ." Preemption rights were granted in the Lake Superior lands to persons in possession as lessees or permittees of the government and to other occupants who had previously discovered mines (provided past rentals were paid). Preemptors were entitled to purchase at the rate of $2.50 per acre.[39] In the Chip-

[32] 3 Howard (U.S.) 120 (1845).
[33] 4 Stat. 686 (1834).
[34] 9 Stat. 37 (1846).
[35] 4 Stat. 364 (1829).
[36] 9 Stat. 37 (1846).
[37] 9 Stat. 146 (1847).
[38] 9 Stat. 179 (1847).
[39] 9 Stat. 472 (1850).

pewa district, similar preemption rights were granted. In 1850, the price of mineral lands classified under these acts was reduced to $1.25 per acre, except that leased land might be sold in tracts of 640 acres at $2.50 per acre.

On August 28, 1850, the Attorney General of the United States, J. J. Crittenden, in a terse opinion for the newly created office of the Secretary of the Interior,[40] ruled that lands containing iron ore "merely" are not mineral lands within the meaning of the two 1847 Acts and are, therefore, to be disposed of "according to the general law for the disposition of other public lands," *i.e.*, as agricultural land.[41] In addition to this lavish giveaway of valuable mineral land, an act in 1852[42] granted 750,000 acres of Federal land to the State of Michigan to aid in the construction of a canal around the falls of St. Mary's River (the modern Soo Canal). After these lands were selected and sold by the canal company ,some which were located in the Upper Peninsula of Michigan were found to contain the immensely valuable Calumet conglomerate lode, later developed by the Calumet and Hecla Consolidated Copper Co.[43]

It is difficult to explain the change in congressional policy with respect to the mineral lands. It is true that dissatisfaction with the lead leasing program in Illinois, Wisconsin, and Missouri perhaps had something to do with it. But, the iron ore and copper lands were known to be valuable when they were sold, whereas (although perhaps incorrectly) the lead mines were thought to have depreciated in value. This was a period in which the country fervently believed that land was an unlimited asset to be disposed of as rapidly as possible in the interest of quick settlement and exploitation in order that all might prosper. Perhaps it is impossible to estimate the total value of the mineral lands in Wisconsin and Michigan which were sold by the Federal government during this period. Estimates vary tremendously.[44] Although we may now conclude that the sale policy was ill-advised or even profligate, this assessment is, of course, made in the light of a conservation policy which in fact did not mature until half a century later.[45]

The iron ore land in northern Minnesota was similarly disposed of under the general public land statutes, although at a later date. The Mining Law of 1872, discussed later in this chapter, was felt to be "unsuitable" to the iron and coal lands in Minnesota, Michigan, and Wisconsin. Without much consideration or opposition, these lands were excluded from the operation of the mining law in 1873.[46] Thousands of acres of valuable mineral land in Minnesota passed into private ownership after the mining boom in the Vermilion district in 1887 and the Mesabi area in the early nineties. Professor Wirth[47] has described in detail the fraudulent entries made in the Duluth land office under the

[40] 9 STAT. 396 (1849).

[41] 5 OPS. ATT'Y GEN. 247 (1852).

[42] 10 STAT. 35 (1852).

[43] See BENEDICT, RED METAL: THE CALUMET AND HECLA STORY (1952).

[44] VAN HISE, THE CONSERVATION OF NATURAL RESOURCES IN THE UNITED STATES 99 (1924) estimates that if the government had retained royalties in the mineral lands disposed of under the 1847 Acts (including iron ore), it would have received more than $100 million in revenue up to the time the author wrote and more than $1 billion in the future. From 1845-1930, the Michigan copper district produced 8,403,640,000 pounds of copper. 1 COPPER RESOURCES OF THE WORLD 161 (The Sixteenth International Geological Congress 1935).

[45] To paraphrase Justice Frankfurter's observation with respect to railroad land grants in his dissenting opinion in United States v. Union Pac. R.R., 353 U.S. 112, 120, 137 (1957).

[46] 17 STAT. 465 (1873).

[47] Wirth, *The Operation of the Land Laws in the Minnesota Iron District*, 13 MISS. VALLEY HIST. REV. 438 (1927), reprinted in THE PUBLIC LANDS 93 (Carstensen ed. 1963).

Cash Purchase Act of 1820,[48] the Preemption Act of 1841,[49] and the Homestead Act of 1862.[50] Although these laws were intended to provide "land for the landless," what actually happened was that entries were made by agents hired by wealthy speculators who ended up owning all the land. The government seemed unable to check this perversion of the public land acts, and the people themselves found nothing strange in homestead entries in an area which was virtually worthless for agriculture.

The Far Western Mining Frontiers

"Where can it be—
This land of Eldorado?"[51]

Although Mark Twain facetiously suggested that whiskey always preceded a pioneer settlement,[52] most of us are willing to give gold the credit for the dramatic increase in the population of California. After years of being romanced to death about the discovery of gold, I am dismayed to learn that historians are not sure whether James Marshall was really the first to find it and whether the date was actually January 24, 1848.[53] For present purposes, it is perhaps enough to say that the event at Sutter's sawmill at Coloma ushered in an extravagant era in the history of mining law. The initial impact of the discovery was relatively mild, except for Sam Brannan who is supposed to have walked up the street in San Francisco shouting, "Gold! Gold! Gold from the American River."[54] Then, President Polk (after smugly insinuating that he had been aware of the valuable gold deposits all along) proclaimed to Congress on December 5, 1848, "The accounts of the abundance of gold in that territory are of such an extraordinary character as would scarcely command belief . . ."[55] With that, the great Gold Rush of 1849 was on![56]

Overnight, miners from all over the world poured into the California mining country. Lead miners from Galena, Cornish miners from England, Chinese, Australians accompanied by the merry clink of the ball and chain,[57] and Americans from all classes of society engaged in a crude form of placer mining which required only a pan, a spade, and some water to wash the earth from the gold dust. Each one a trespasser on the Federal public domain, each one concerned only with his own personal El Dorado.

The first miners encountered few problems, but with the advent of hordes of

[48] 3 STAT. 566 (1820).

[49] 5 STAT. 453 (1841).

[50] 12 STAT. 392 (1862).

[51] From Edgar Allan Poe's finest lyric, *Eldorado*, first published in April 21, 1849, and inspired, of course, by the Gold Rush.

[52] See Wyman, *Western Folklore and History*, 1 THE AMERICAN WEST No. 1, 44 (1964).

[53] The problems are posed and the documents assembled in PAUL, THE CALIFORNIA GOLD DISCOVERY: SOURCES, DOCUMENTS, ACCOUNTS, AND MEMOIRS RELATING TO THE DISCOVERY OF GOLD AT SUTTER'S MILL (1966). As to the identity of the discoverer, there must be some who are romantic enough to vote for Peter Wimmer's kids. Assuming Marshall to be the culprit, the reader may wish to discover what happens to people who start gold rushes. See DILLON, FOOL'S GOLD: THE DECLINE AND FALL OF CAPT. JOHN SUTTER OF CALIFORNIA (1967); GAY, JAMES W. MARSHALL: THE DISCOVERER OF CALIFORNIA GOLD (1967); GUDDE, SUTTER'S OWN STORY (1936); O'BRIEN, CALIFORNIA CALLED THEM (1951). Marshall is reported by a contemporary diarist, the Mormon Henry W. Bigler, to have said exactly what you'd expect, "Boys, by God I believe I have found a gold mine." GUDDE, BIGLER'S CHRONICLE OF THE WEST 89 (1952).

[54] BAILEY, SAM BRANNAN AND THE CALIFORNIA MORMONS 121 (1943).

[55] 4 MESSAGES AND PAPERS OF THE PRESIDENTS 629, 636 (Richardson ed. 1897).

[56] For recent accounts of the Gold Rush period, see CLARK, FRONTIER AMERICA (1959); GREEVER, THE BONANZA WEST: THE STORY OF THE WESTERN MINING RUSHES 1-86 (1963); HAWGOOD, AMERICA'S WESTERN FRONTIERS 164-98 (1967); KIRSCH AND MURPHY, WEST OF THE WEST: WITNESS TO THE CALIFORNIA EXPERIENCE 1542-1906 (1967); PAUL, MINING FRONTIERS OF THE FAR WEST—1848-1880 12-36 (1963).

[57] See MONAGHAN, AUSTRALIANS AND THE GOLD RUSH: CALIFORNIA AND DOWN UNDER 1849-54 (1966).

newcomers, it became necessary to establish order and to protect their digging through collective action. The famed "mining camps" which grew up administered a system of criminal law (backed up primarily by a hemp rope) and established mining codes containing rules for acquiring and maintaining mining claims.[58] The law administered was democracy in action: majority rule. A great deal of nonsense has been written (mostly in judicial opinions) about the customary law of the mining camps as a distinctive contribution to American jurisprudence. It was no more distinctive than the Mayflower Compact or the claims clubs of the midwestern farmers. It was conceived out of necessity in the remote areas of the West where the Federal government provided no security to one's person or to titles. Nor was there anything particularly unusual about the mining rules which were adopted. As one might expect, there were provisions relating to an initial discovery, the size and marking of claims, the amount of work required to hold the land from others who were only too eager to cry "abandonment," and even, in some areas, rules relating to extralateral rights. Priority of possession as creating a prior right was the order of the day, just as preemption figured prominently in the public land laws. It can hardly be suggested that this was a novel concept in Anglo-American law, and its appropriateness in the mining setting is quite obvious. As the writer has suggested elsewhere, few, if any, of the California cases were significantly influenced by a specific mining camp regulation.[59] Most were decided on the basis of elementary rules of the law of property. The doctrine of prior appropriation of water was a natural concomitant of the customary mining law.[60] Since water was essential to early mining methods as well as to the later hydraulic methods, it was quite natural that the miners would proclaim that the first to appropriate the water had priority over latecomers. It was immaterial that water was not used on riparian land, for it was a lucky miner, indeed, who found his water supply adjacent to his mining claim. The doctrine of prior appropriation in the western states, however unsuited it may be to present needs, was a natural extension of the philosophy of the miners.

In later years, there was no doubt some litigation over mining titles which did in fact depend upon the early mining codes. However adequate the codes may have been in the 1850's, it is clear that they became virtually useless in settling complicated legal problems involving lode claims in later years.[61]

It is not intended here to depreciate the efforts of several historians who have attempted to trace the antecedents of the western mining codes. Indeed their conclusions demonstrate that the rules of the mining camps are not peculiar to the Far West mining community. The codes bore a marked resemblance to ancient Spanish codes in Mexico.[62] They are not unlike the regulations of the miners in Dubuque, Iowa.[63] The Cornish and Mexican miners in California certainly brought with them traditions from their homelands. And re-

[58] If one is prepared for the author's Nietzschean approach at times, the classic work is SHINN, MINING CAMPS: A STUDY IN AMERICAN FRONTIER GOVERNMENT (1884) (reissue 1965 with an excellent introduction by Rodman W. Paul). A recent detailed description of a particular mining district is JACKSON, TREASURE HILL (1963). See also WYNN, DESERT BONANZA: THE STORY OF EARLY RANDSBURG, MOJAVE DESERT MINING CAMP (2d ed. 1963); BARSNESS, GOLD CAMP: ALDER GULCH AND VIRGINIA CITY, MONTANA (1962).

[59] 1 AMERICAN LAW OF MINING 23-24 (Martz ed. 1960).

[60] BOORSTIN, THE AMERICANS: THE NATIONAL EXPERIENCE 80-81 (1965).

[61] PAUL, MINING FRONTIERS OF THE FAR WEST 1848-1880 175 (1963).

[62] See Aiton, *The First American Mining Code*, 23 MICH. L. REV. 105 (1924).

[63] SHINN, *supra* note 58 at 44.

cently it has been noted that many of the codes were quite similar to the regulations promulgated by Lt. Martin Thomas in the Galena lead district.[64]

By the late fifties, the placer mines in California had been largely worked out, and the average miner was not equipped to engage in the type of mining necessary to extract ore from veins penetrating far into the mountains. Throughout the period of 1848-80, he was rescued from "unemployment" when the West witnessed a series of mining rushes in all directions, with the lonely miner rushing from one part of the country to the other. Most of these rushes followed the California pattern in a general way. A discovery soon produced wild rumors of the vast wealth awaiting any honest miner who had enough gumption to stop looking for his mule and start prospecting; then, the period of the rush—often characterized by tragic disillusionment; later, if minerals were discovered, a fairly stable mining camp emerged. This was usually followed by an influx of shifty-eyed bartenders, hurdy-gurdy girls, untrained lawyers, the wildest outlaws imaginable, and peripatetic preachers, all (or most) of whom sought to prey upon the luck of the miner. The lawless element eventually produced the vigilante committee. Order was usually restored about the time the mines were worked out. The rapid exodus produced the "ghost town"[65] which, along with the "lost bonanzas,"[66] is the perennial subject of popular writers.

Two contemporary historians have carefully considered the mining frontiers of the West. Rodman W. Paul's superb treatment of the mining rushes is part of the "Histories of the American Frontier" series and is especially valuable for his insight into the technical aspects of mining.[67] William S. Greever has given us a colorful account of life in the mining districts.[68]

The mining frontier was quite different from the systematic western advance of the fur trapper and the farmer. The pattern was dictated by a series of discoveries in the West which sent the hapless prospector scurrying off to remote areas which offered an almost impossible challenge to human existence. After the decline in placer mining in California, miners were lured to the Pike's Peak area in Colorado in 1859 in what has been described as one of the "wildest and least rational rushes in the nation's history."[69] Many disillusioned prospectors returned home, but those who stayed on made discoveries in the Gregory Gulch area and later in the early sixties substantial finds near Boulder and Denver. Leadville and Cripple Creek became famous in the seventies.[70]

At the same time as the early Colorado rushes, miners were attracted to the eastern foothills of the Sierra Nevadas in Nevada. In 1859, two lucky Irishmen made discoveries in Davidson Mountain which turned out to be part of the richest of all veins,

[64] WRIGHT, THE GALENA LEAD DISTRICT: FEDERAL POLICY AND PRACTICE 1824-1847 102 (1966).

[65] GOLD RUSH COUNTRY: GUIDE TO CALIFORNIA'S MOTHER LODE AND NORTHERN MINES (2d ed. rev. 1963); NADEAU, GHOST TOWNS AND MINING CAMPS (1965); WOLLE, THE BONANZA TRAIL: GHOST TOWNS AND MINING CAMPS OF THE WEST (1953); WOLLE, MONTANA PAY DIRT: A GUIDE TO THE MINING CAMPS OF THE TREASURE STATE (1963); Stegner, *California's Gold Rush Country*, 24 HOLIDAY 64 (August 1958).

[66] CONTROTTO, LOST DESERT BONANZAS (1963); DRAGO, LOST BONANZAS (1966); MILLER, ARIZONA CAVALCADE: THE TURBULENT TIMES (1962).

[67] PAUL, *supra* note 56.

[68] GREEVER, *supra* note 56. See also THE MINING FRONTIER: CONTEMPORARY ACCOUNTS FROM THE AMERICAN WEST IN THE NINETEENTH CENTURY (Lewis ed. 1967) for interesting material taken from the newspapers of the boom towns and mining camps.

[69] BILLINGTON, WESTWARD EXPANSION 621 (3d ed. 1967). An excellent bibliography on western mining history will be found on 864-68. For a general description of the early frontier, see BILLINGTON, THE FAR WESTERN FRONTIER 1830-1860 (1956).

[70] LEE, CRIPPLE CREEK DAYS (1958); SPRAGUE, MONEY MOUNTAIN, THE STORY OF CRIPPLE CREEK GOLD (1953).

the Comstock Lode. In its first 6 years the lode produced $50 million which rose to nearly $100 million by 1868, and Virginia City had become one of the wildest mining districts in the West. The camp reached its zenith in 1873 with the discovery, at a depth of well over a thousand feet, of the Big Bonanza which produced one half of the lode's total production (approximately $375 million to 1919) and paid four-fifths of all dividends. Yet, by 1890, the boom in Washoe District, as it was called, was pretty much over although staggering fortunes, particularly as a result of the Big Bonanza, had been made. Tucson, in 1862, completed the advance of the miner from California east and southwest.[71]

Simultaneously miners pushed northward into Washington, Canada, Idaho, and Montana.[72] Thirty-five thousand went to Fraser River, British Columbia, in 1858, and from there they drifted south to the Snake River Valley in Idaho in the early sixties. This was followed by the great Montana gold rush in 1863 where Alder Gulch alone disgorged $30 million worth of gold in 3 years. Idaho produced one bonanza after another from 1861 into the mid-eighties.[73] The last frontier of the placer miner and the prospector was the Black Hills in 1875 where miners, undaunted by the Sioux, made Deadwood, South Dakota, one of the most lawless mining districts in American history.[74]

The fabulous mines in Idaho and Montana were developed by eastern capitalists from the 1880's on. The great Anaconda mines near Butte gave Montana the most colorful legal and political history in the West. It was there that the wars of the great Copper Kings were waged, including the price war between Anaconda and the Calumet and Hecla mines in Michigan, the war between W. A. Clark and Marcus Daly over the political control of Montana, and, last, but especially interesting to the lawyer, the spectacular apex litigation over extralateral rights which made F. Augustus Heinze the most sensational figure in copper circles.[75] The last word has not been written on Anaconda.[76]

Congressional Inaction on the Mineral Lands Question: 1850-1866

The failure of Congress to act on the problem of the California gold mines for over 16 years has always been perplexing. Congressmen seemed to be simultaneously attracted to and repulsed by the question. This ambivalence is illustrated in the three occasions when the matter was debated extensively between 1850 and 1866. Although there was no agreement on the policy to be adopted, the debates shed considerable light on the temper of the times. During this period, valiant attempts in the States of Arizona, Montana, Colorado, and Idaho to

[71] SMITH, HISTORY OF THE COMSTOCK LODE (1943) is the classic treatment. See also GLASSCOCK, GOLD IN THEM HILLS (1932); LORD, COMSTOCK MINING AND MINERS (1966); LYMAN, THE SAGA OF THE COMSTOCK LODE (1934); LYMAN, RALSTON'S RING, CALIFORNIA PLUNDERS THE COMSTOCK LODE (1937); MICHELSON, THE WONDERLODE OF SILVER AND GOLD (1934).

[72] The Northwest frontier is discussed in TRIMBLE, THE MINING ADVANCE INTO THE INLAND EMPIRE (1914). See also CAUGHEY, HISTORY OF THE PACIFIC COAST (1933); JOHANSEN AND GATES, EMPIRE OF THE COLUMBIA: A HISTORY OF THE PACIFIC NORTHWEST (1957); POMEROY, THE PACIFIC SLOPE (1965); WINTHER, THE GREAT NORTHWEST (1947).

[73] For descriptions of later strikes, see MURDOCK, BOOM COPPER (1943); STOLL AND WHICKER, SILVER STRIKE: THE TRUE STORY OF SILVER MINING IN THE COEUR D'ALENES (1932).

[74] See Briggs, *The Black Hills Gold Rush*, 5 N.D. HIST. Q. 7 (1931). See also BENNETT, OLD DEADWOOD DAYS (1935); PARKER, GOLD IN THE BLACK HILLS (1966); STOKES AND DRIGGS, DEADWOOD GOLD (1927).

[75] CONNOLLY, THE DEVIL LEARNS TO VOTE (1938); HOWARD, MONTANA: HIGH, WIDE AND HANDSOME (1959); TOOLE, MONTANA: AN UNCOMMON LAND (1959).

[76] MARCOSSON, ANACONDA (1957) is a company book.

enact interim legislation were largely unsuccessful.[77]

Some of the California legislation dealing with the gold mines is well known. The famous "Possessory Act" of 1850 and 1852 provided that persons in possession of public lands for cultivation or grazing purposes were entitled to protection from interference with their possession.[78] This was subject, however, to the proviso that if such lands contain mines of precious metals, miners were not precluded from working the mines. The "unusual circumstances" prevailing in the California gold fields were felt to be a sufficient basis for legalizing what would otherwise be a trespass. Certainly there was a strong feeling that a few individuals should not be permitted to monopolize mining land by preempting large tracts ostensibly for agricultural purposes.[79] The California Legislature also recognized in 1851 the right of miners to establish their own rules in an amendment to the Civil Practice Act to the effect that in actions involving mining claims, courts should receive proof of the customs, usages, and regulations established in the mining camps unless they were in conflict with the laws of the state.[80] The state assembly also heard much discussion of the foreign miners' taxes, and there was some agitation for other types of taxes on the mines.[81]

The Frémont Bill. Although both President Polk and President Taylor made general recommendations concerning the California mineral lands,[82] the first real debate in Congress was touched off by a bill introduced by Senator John Frémont of California on September 10, 1850.[83] Rejecting any notion that the mineral lands should be a source of revenue to the Federal government, the Senator suggested that Federal agents be authorized to issue permits to miners (who were citizens) to work lots either by hand (30 square feet) or by machinery (210 square feet). Relatively small fees were to be charged for the permits, and no person could have two permits at the same time. Debate centered around the revenue issue, the requirement of citizenship to qualify for a permit, and the administrative machinery which would be required to supervise the gold fields.

Senator Thomas Ewing of Ohio, a former Secretary of the Interior, favored a plan under which substantial profits would accrue to the government and proposed an amendment requiring miners to sell their gold to the government at the rate of exchange currently prevailing in the mining region.[84] Since the rate elsewhere was $2 per ounce higher, the government stood to make a profit. Senator Benton of Missouri, erstwhile foe of leasing of the lead mines, suggested that this would invite corruption and establish an expensive and unpopular bureaucratic system.[85] This rather vague objection defeated the amendment.[86]

The debate switched to citizenship as a basis for eligibility for a permit. The discussion was not illuminating. Senator Seward of New York felt that any person expressing an intention to become a citizen should in fact be eligible for a permit.[87] Undoubtedly aware of the California legis-

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[77] YALE, LEGAL TITLES TO MINING CLAIMS AND WATER RIGHTS 84-86 (1867).

[78] CALIFORNIA GENERAL LAWS 1850-64 § 6790 (1868).

[79] Early California cases dealing with the application of the Possessory Act are discussed in 1 AMERICAN LAW OF MINING 29-31 (Martz ed. 1960).

[80] CALIFORNIA GENERAL LAWS 1850-64 § 5552 (1868).

[81] See generally Ellison, *The Mineral Land Question in California 1848-1866,* 30 SOUTHWESTERN HIST. Q. 34 (1926), reprinted in THE PUBLIC LANDS 71, 77-82 (Carstensen ed. 1963).

[82] CONG. GLOBE, 30th Cong., 2d Sess., App. 6 (1848) (President Polk); CONG. GLOBE, 31st Cong., 1st Sess., App. 3 (1849) (President Taylor).

[83] CONG. GLOBE, 31st Cong., 1st Sess., 1793 (1850).

[84] *Id.* at App. 1363.

[85] *Id.* at 1364.

[86] *Id.* at 1365.

[87] *Id.*

lation already taxing foreigners at exorbitant rates for the privilege of mining,[88] the California Senators immediately aligned themselves with those from Georgia, Mississippi, and Ohio, and all went on record to the effect that this would encourage Mexicans (an inferior caste) to cross over our borders and rob us of the fortune that "belonged" to the American people (presumably as the spoils of the conquest of California).[89] It was only the Senator from Wisconsin who was heard to sympathize with the thousands of people of foreign birth who had migrated to the California mines from Wisconsin alone. The Iowa Senator also thought the Mexicans were a miserable lot and should be excluded from the mines, but he did think it would be possible to include Europeans. Senator Foote of Mississippi suggested, apparently seriously, that eligibility should be limited to Europeans who could produce "testimonials of good character." The Senate finally adopted an amendment to Frémont's bill making English and Europeans who had not been convicted of crimes eligible for permits. How this was to be administered in the gold fields no one quite seemed to know for sure.

On the question of government supervision of the mines, Senator Alpheous Felch of Michigan would "abolish the whole machinery established by the bill. . . . abolish entirely the provision which requires officers, agents, superintendents, and surveyors."[90] Although this was eventually defeated,[91] the Felch approach by chance approximated the actual position of Congress during the 16-year period. The Frémont bill was eventually passed by the Senate[92] but died on the table in the House.[93] Frémont's plan met with widespread disapproval in California where the majority of people favored, of course, no regulation of the mines whatsoever.[94]

Apparently resigned to the complacent attitude in Congress, President Fillmore on December 2, 1851, stated:[95]

> I am inclined ... to advise that they [the gold mines] be permitted to remain as at present, a common field, open to the enterprise and industry of all our citizens, until further experience shall have developed the best policy to be ultimately adopted ...

Revival of the Mineral Question, 1858-60. In 1858, Secretary of the Interior J. Thompson, found it frankly difficult to reconcile the Federal policy as to the copper, iron, lead, and coal lands with the do-nothing attitude toward the gold mines.[96] In the House, the gentleman from Virginia felt that, in withholding millions of acres from public sale, the government was acting "like a miser."[97] Representative Scott of California went so far as to deny the right of the government to dispose of the mineral lands and announced that his state "would resist to the last any encroachment on the part of the federal government."[98]

In the Senate things were hardly more temperate. In April 1860, Senator Gwin of California introduced an amendment to the homestead bill, then under consideration, which would retroactively legalize mining by anyone who declared his intention to become a citizen.[99] He felt this would help to drive off some 50 to 60 thousand Chinese "locusts and grasshoppers" presently engaged in mining. Although the citizenship issue was again interjected, legislators directed their atten-

[88] YALE, *supra* note 77 at 34.

[89] CONG. GLOBE, 31st Cong., 1st Sess., App. 1365-1366, 1377 (1850).

[90] *Id.* at 1369.

[91] *Id.* at 1371.

[92] *Id.* at 2029-30.

[93] *Id.* at 2030.

[94] ELLISON, *supra* note 81.

[95] CONG. GLOBE, 32d Cong., 1st Sess., App. 18 (1851).

[96] CONG. GLOBE, 35th Cong., 2d Sess., App. 27 (1858).

[97] *Id.* at 49.

[98] *Id.* at 1487.

[99] CONG. GLOBE, 36th Cong., 1st Sess., 1754 (1860).

tion primarily to the question of whether, in view of the fact that the amendment applied only to two states (California and Oregon), it should be incorporated in the homestead law which was intended to have general application throughout the country. With no support from the East and very little from the South, the Gwin amendment suffered a resounding defeat of 33-9 on the issue of germaneness.[100] The Homestead Act was eventually passed over President Buchanan's veto.[101]

The Civil War Years. Four unimportant bills relating to the mineral question were summarily disposed of during the early years of the Civil War.[102] A different mood, however, fell over the 38th Congress in the early part of 1864. It was suggested that studies be made to determine how the mines might be most effectively exploited.[103] Revenue was desperately needed to pay the debts of the war, and in the debates during these years the revenue question was considered in several different contexts, each of which will be reviewed here briefly: (1) taxation of the production of gold; (2) Presidential authorization to seize the gold mines; (3) retention of title by the government with freedom of exploration; and (4) sale of the mineral lands in small sections at public auction.

The Senate debated rather extensively the possibility of taxing either the gross or net production from the mines, as well as a transportation tax.[104] Opponents of the tax measures emphasized the plight of the western miner: on the one hand was the insecurity of land titles resulting from congressional inaction, which in turn discouraged investment in expensive mining techniques; on the other hand, profits from the mines were said to be greatly exaggerated. Since the drama of the Comstock bonanza was in the process of being revealed to the country, the legislators from Nevada and California had some difficulty with their contention that the cost of production really exceeded the value of the ore produced. A relatively small tax on production was finally agreed upon,[105] although it was never very effective as a revenue measure.

Representative Renando Wood of New York introduced an unusual resolution in the House requesting that the President be authorized to take such measures as in his judgment might be necessary for the protection of the rights of the government in the mineral lands until proper legislation could be enacted by Congress.[106] He felt that the Federal debt could almost be liquidated by appropriating and supervising the mining regions. After considerable discussion, the Wood resolution was laid on the table. Western Representatives pointed to the futile attempt of 1835 by Jefferson Davis and his troops to drive the miners from the lead fields.[107] No doubt President Lincoln's writ to seize possession of the New Almaden mine in May 1863 was also in the minds of most Congressmen.[108] The obvious difficulty with the Wood plan —the necessity of military seizure—perhaps prevented any serious attempt to incorporate it into legislation.

On December 11, 1865, Representative Kasson of Iowa introduced a resolution which would have the House Committee on Public Lands inquire into the feasibility of reporting a bill which would regulate all mining on the public domain. After re-

[100] *Id.* at 1795.

[101] 11 STAT. 392 (1862).

[102] CONG. GLOBE, 37th Cong., 2d Sess., 13 (1861); CONG. GLOBE, 37th Cong., 3d Sess., 16 (1862); *Id.* at 91; *Id.* at 166.

[103] CONG. GLOBE, 38th Cong., 1st Sess., 658-59 (1864) (Rep. Bennett of Colorado suggested that experienced miners be brought from Europe to work the gold and silver mines).

[104] *Id.* at 2556-58 (1864).

[105] *Id.*, App. at 223.

[106] *Id.* at 1695.

[107] *Id.* at 1696.

[108] The century-long history of the mine has recently been reviewed in JOHNSON, THE NEW ALMA-

serving title perpetually to all minerals (except those which had been expressly disposed of by Congress), the resolution favored granting possessory rights to mine, with claimants being required to file returns with the United States assessor listing the amount of gold and silver produced together with the cost of production. On profits, the claimant would be required to pay the established income tax.[109] The resolution was apparently lost after being referred to the newly created Committee on Mines and Mining which was unimpressed with the solution.

Although he later changed his position, Senator John Conness of California was, surprisingly enough, one of the first to introduce a bill for sale of the mineral lands.[110] The consistent champion of subdivision and sale, however, was Representative George W. Julian of Indiana, who introduced his first bill on February 2, 1865.[111] When the bill was reported back

DEN QUICKSILVER MINE (1963). For the background of the famous controversy, it should be remembered that the Treaty of Guadalupe Hidalgo respected early private land grants of the Mexican Government if they were valid according to Mexican law. To untangle these early grants, Congress set up the California Land Commission. 9 STAT. 631 (1851). The President was authorized to appoint a representative to protect the interests of the Federal government. A claimant was required to present his case to the commission with supporting documentary evidence. The board certified its decision to the United States District Attorney. Appeals might be taken to the Federal district court and ultimately to the Supreme Court. The success of the land commission has been disputed by historians. Especially critical is CAUGHEY, CALIFORNIA 363-78 (1940). The commission worked in a highly emotionally charged atmosphere, frequently required to investigate difficult legal concepts of the Civil Law. The result was that a number of fraudulent claims were undoubtedly confirmed and perhaps as many valid ones rejected. See 1 AMERICAN LAW OF MINING 31-34 (Martz ed. 1960).

Edwin M. Stanton, later Secretary of War, was appointed in 1858 to act as special counsel to ferret out fraudulent claims. One of the most spectacular claims before the commission involved one Andres Castillero who in 1845 filed a denouncement (a formal claim to a mine) with the Mexican Government after having discovered the quicksilver mine on what was apparently privately owned property. Such a claim was valid under Mexican law if it were appropriately perfected. Eventually Castillero and his successors acquired a portion of the land (the Berreysea grant) on which the mine was located, but for years there were boundary-line squabbles with the adjoining owners known as the Larios. Castillero's legal position was that if the Berreysea and Larios properties were contiguous, the United States had no valid interest in the litigation. In a doubtful decision, the Supreme Court held that the Castillero mining claim had not been perfected as was required by Mexican law. United States v. Castillero, 2 Black (U.S.) 17 (1862). The intervention of the United States in what was essentially private litigation was fiercely criticized by Gregory Yale who had at one time been associated with the Castillero group. YALE, MINING CLAIMS AND WATER RIGHTS 332-36 (1867).

After the *Castillero* decision, President Lincoln in 1863 issued an order directing the military to oust Castillero from the mine on the ground that Castillero was a trespasser on land belonging to the United States. The only known copy of the order is printed in its entirety in YALE, *supra*, at 401-402. Lincoln's action caused considerable consternation among the miners who now believed that they too might be ousted from their claims. Although the order was later rescinded, the Castillero group felt obliged to sell out to the successors of the Larios for a nominal sum, considering the immense potential value of the mine. In another case, United States v. Fossat, 2 Wall (U.S.) 649 (1864), the Supreme Court eventually upheld the Larios (Fossat) claim, finding that the mine was entirely located on that property.

The New Almaden litigation was undoubtedly the most famous case of the day, eclipsed only by the Civil War. The decision in the *Castillero* case is 371 pages long. The opening statement of the case in *Fossat* is sheer poetry. 2 Wall (U.S.) 649, 650 (1864). The most celebrated legal orators of the day were involved at various stages and their fees were tremendous. Lurking in the background of the cases was the frightening rumor that the mine was actually owned by Great Britain. JOHNSON, *supra*, has documented these items as well as the later history of the mine which has been one of astonishing productivity. Apparently it is being operated to a limited extent at the present time.

[109] CONG. GLOBE, 39th Cong., 1st Sess. 20, 31 (1865).

[110] CONG. GLOBE, 38th Cong., 1st Sess., 3360, 3544 (1864).

[111] CONG. GLOBE, 38th Cong., 2d Sess., 7 (1864).

from the Committee on Public Lands (of which Mr. Julian was chairman), the Congressman delivered a most eloquent defense of his plan.[112] Essentially it was to survey and subdivide mineral lands into small tracts, after which the lots would be sold at a public auction. Minimum prices would be fixed depending upon the size, locality, and mineral value of the land. Mining claimants in possession were given a right to purchase their claims at minimum prices, thereby avoiding the necessity of competing with "rich capitalists." Although it was regarded primarily as a revenue measure, Julian's deep concern was always with orderly settlement of the public domain. He felt that his plan would tend to promote and encourage permanent settlements as distinguished from the tentative community of the nomadic miner. Although Julian was an ardent foe of the land speculator, the anti-monopoly provisions of the bill seemed rather loose. He also acknowledged that there would be some difficulty in arriving at a fair minimum price. Failing in the 38th Congress to set the bill apart for consideration as a special order,[113] he reintroduced it soon after the commencement of the 39th Congress.[114] His attempts to secure serious consideration of the bill were unsuccessful. The counterpart of Julian's bill was introduced in the Senate by John Sherman of Ohio.[115] Both bills were vigorously opposed by the California delegation, Senator Conness contending that the bill, if enacted into law, would bring "inextricable confusion" and would cause a "revolution in the mining country."[116] Sherman, like Conness, also later changed his mind.

[112] *Id.* at 684-87.

[113] *Id.* at 795.

[114] CONG. GLOBE, 39th Cong., 1st Sess., 49 (1865).

[115] *Id.* at 7.

[116] *Id.* at 361.

The Year of Decision: 1866 [117]

The mining interests in the West were well represented in Congress for some time before the enactment of the 1866 Act by Senator William Stewart of Nevada. Stewart's fame as a mining lawyer is legendary.[118] He once cross-examined a witness, whose veracity was questionable, with a derringer. In the celebrated battle over whether the Comstock was one ledge or many he opposed David S. Terry, who was a former Justice of the California Supreme Court and who, by all accounts, was no slouch with the gun either.[119] The jury divided. Stewart's political success was due in large part to the fact that he was bright, articulate, and painstakingly well prepared. Shortly after his credentials were accepted by the Senate, he advocated the creation of a new committee on mines and mining interests. After several attempts to secure consideration of his resolution, another, introduced by Senator Anthony of Rhode Island, was adopted.[120] It created the Committee on Mines and Mining, more appropriately named than was Stewart's. Membership included Stewart and Conness of California as well as five others who appear to have been largely pro-mining. A similar committee was created in the House.[121]

advantage of an opportunity to flail away

Stewart also advocated larger appropriations for investigating the extent of mineral resources in the West,[122] and soon took

[117] With apologies to the late Bernard DeVoto who thought it was 20 years earlier in his charming book, THE YEAR OF DECISION 1846 (1942).

[118] These and other tales are recounted in GREEVER, THE BONANZA WEST: THE STORY OF THE WESTERN MINING RUSHES 99, 101 (1963). Less modest accounts will be found in his autobiography, REMINISCENSES OF SENATOR WILLIAM M. STEWART (1908).

[119] Although Terry was killed by a United States Marshal while committing an assault on Justice Field, his more successful gun feats are described in SWISHER, LIFE OF STEPHEN J. FIELD 321-61 (1930).

[120] CONG. GLOBE, 38th Cong., 2d Sess., 1429 (1865).

[121] CONG. GLOBE, 39th Cong., 1st Sess., 83, 114 (1865).

at the advocates of sale of the mineral lands.[123] Stewart's greatest accomplishment in the 38th Congress came when the Senate as a Committee of the Whole was considering a bill to create Federal district and circuit courts in Nevada. Stewart was wary of an earlier Supreme Court decision which held that the Court had no appellate jurisdiction to review a state supreme court decision which involved a contest between private claimants over land owned in fact by the United States.[124] With the enthusiastic support of both Stewart and Conness a statute applicable to all Federal courts was adopted. Under the act, no possessory action for the recovery of any mining "title" would be affected by the fact that the land was owned by the United States, and "each case shall be adjudged upon the law of Possession."[125] This seems to have been the first Federal statute expressly recognizing, to a limited extent, an implied license to miners to go upon Federal land to extract minerals.

Two other special acts applicable to Nevada were enacted in 1866. The first confirmed possessory rights to mining claims acquired in compliance with the rules and regulations adopted by miners in the Pah-Rangat and other mining districts.[126] The second granted a title in fee to designated mineral land to A. Sutro for the construction of a drainage and exploration tunnel to the Comstock Lode.[127] These confirmatory acts were adopted only shortly before the 1866 legislation.

During 1865 and 1866 the *Congressional Globe* is replete with petitions and memorials by private citizens (usually miners' groups), as well as state legislatures, imploring Congress not to take any action which would involve the sale of the mineral lands at public auction (the Julian plan).[128]

Senator John Sherman of Ohio, having undergone a change of philosophy since he sponsored a plan similar to Julian's, introduced in April 1866 a bill, S. 257, to regulate the occupation of, and to extend the right of preemption to, mining land.[129] After referral to the Committee on Mines and Mining, it was reported back in May, accompanied by an amendment which was explained in a written report. The amended bill was supported by the Treasury as well as the Interior Department. Debate began on June 18. Briefly, the bill opened the mineral lands to free exploitation with the right to secure, for a nominal amount, title in fee simple to a lode mining claim.

Senator Stewart, the principal draftsman, defended the bill on economic grounds.[130] His logic, which escapes one from time to time, went something like this. By permitting a miner to patent a lode claim, the act will give security to mining titles. This, in turn, will encourage investment in mining property with a resulting increase in the production of gold. The principal asset of the United States which backs up its debts is land. Increased production of gold will raise the value of land, and, presto, the national debt will be proportionately reduced. Whatever one may think of Stewart's economic theories, it is clear that his arguments were most effective in convincing the Senate to pass the bill.

Senator Williams of Oregon worried about the provisions in S. 257 for obtaining patents in fee to mining claims, although he generally favored free and open exploration and a preservation of the existing customary law of the miners. When the Senator became involved in technical

[122] CONG. GLOBE, 38th Cong., 2d Sess., 1367-68.

[123] *Id.* at 886.

[124] Lownsdale v. Parrish, 21 How (U.S.) 290 (1859).

[125] 13 STAT. 440 (1865).

[126] 14 STAT. 43 (1866).

[127] 14 STAT. 242 (1866).

[128] *E.g.*, CONG. GLOBE, 39th Cong., 1st Sess., 360, 494, 518, 978, 1036, 1390, 1724 (1866).

[129] *Id.* at 1844.

[130] *Id.* at 3225-29.

mining law (a la Comstock), he was openly scoffed at by Stewart and Conness. The Williams amendment,[131] which would have continued the laissez-faire policy of the past, was defeated by a vote of 21-10 (18 members absent).[132] By the vote, the Senate had effectively committed itself to a new mineral policy, and the only feasible plan seemed to be the policy of free exploration with the right of preemption which was advocated by Stewart. The bill, as amended by the Committee on Mines and Mining, was then passed, and, on Stewart's motion, its title was amended to read: "A bill to legalize the occupation of the mineral lands and to extend the right of preemption thereto."[133] As amended, it had the support of all members of the Senate Committee on Mines and Mining, half of the Committee on Public Lands, and all but one of the members of the Committee on Finance.

S. 257 had a short life in the House. George W. Julian, Chairman of the House Committee on Public Lands, had the bill referred to his committee.[134] From the duties of the two committees, it would seem that it might have been more appropriately referred to the Committee on Mines and Mining.[135] There seemed to be little doubt at this point that the bill would die under Julian's control since he was extraordinarily jealous of his own proposal.

It was at this time that the western bloc in Congress conceived a most imaginative plan of legislative maneuvering. It was discovered that earlier in March 1866, Representative Higby of California had introduced a bill, H.R. 365,[136] designed to authorize a right-of-way over public lands in California to ditch and canal owners. Apparently by mistake, it was referred to the House Committee on Public Lands. This, when pointed out, was corrected, and the House then referred the bill to the Committee on Mines and Mining.[137] As it later turned out, this was a crucial move. When the bill was reported out of the House committee it was passed by the House. On the same day it was taken to the Senate and referred to its Committee on Public Lands, of which Stewart was a member. On July 22, 1866, it was reported back with an amendment which preserved the title but eliminated in toto the original provisions.[138] Substituted for the contents of H.R. 365 was S. 257 which had passed 3 weeks earlier in the Senate but was now languishing in Julian's House Committee on Public Lands.

When H.R. 365 went back to the House, it bore no resemblance to the former bill except for the name, *i.e.*, a grant of a right-of-way to ditch and canal owners. Since the original H.R. 365 had come from the House Committee on Mines and Mining, the amended Senate version would be referred to the same committee in routine fashion. For Julian's committee—Public Lands—to acquire the bill, a majority vote would have been necessary, something Julian apparently could not muster up. When Julian's motion to refer H.R. 365 to his own committee was finally put to a vote he lost so resoundingly that they did not bother to record the "nays."[139] Apparently he had 17 out of 110 possible votes. The final vote on the Senate amendment to H.R. 365 went through smoothly, although it might be observed that there were almost as many Senators absent as there were those who voted favorably. The bill—a lode mining law—became law on July 26, 1866, under the amazing title: "An

[131] *Id.* at 3233.
[132] *Id.* at 3453.
[133] *Id.* at 3454.
[134] *Id.* at 3548.
[135] The duties of the respective committees are stated in CONG. GLOBE, 39th Cong., 1st Sess., 83-84, 3300 (1866).
[136] *Id.* at 1259.
[137] *Id.* at 1332.
[138] *Id.* at 3951.
[139] *Id.* at 4050-54.

act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes."[140]

Julian made a dramatic defense of his bill before Congress.[141] Basically he wanted to apply the philosophy of the homestead and preemption laws to the mineral lands, with certain anti-monopoly safeguards. Whether this would have been a workable solution to the problem of the mineral lands is highly doubtful. In the first place, mining property simply did not lend itself to rectangular subdivision after the pattern of the United States government survey. Apart from that, Julian could not possibly have imagined that the "little miner" (like the poor farmer) could possibly have benefited in 1866 by legislation involving a sale of the mineral lands. By that time, mining on the public domain was largely lode mining, perfected by trained mining engineers and financed by wealthy investors in this country and from England. With the possible exception of early California, the individual miner had never greatly profited from the mineral lands. The basic problem with the 1866 Act was that no revenue was reserved for the government. It is entirely possible that the mistake which the eastern bloc (including Julian) really made was in their conclusion that leasing, which had never really been studied by Congress or the government, was not workable. It might have been difficult in 1849 in view of the chaotic conditions existing in California. It is not so clear that it would have been unworkable by 1866.

The political shenanigans behind the act may seem relatively tame to the modern Congressman. While Stewart's plan was clever and audacious, there was never any question but that the merits of the bill were fully debated in both Houses. The Senate was aware of the fact that H.R. 365, except for its title, had been replaced by S.257, and, of course, Julian made his position on the legislative history quite clear in the House debates. Years later he still maintained: "The clumsy and next to incomprehensible bill thus became a law, and by legislative methods as indefensible as the measure itself."[142]

A Closer Look at the Mining Act of 1866

Was the act as "incomprehensible" as George W. Julian suggested? Gregory Yale, hardly an impartial observer, admitted that it was not a model of draftsmanship but concluded that its real merit lay in the fact that it represented an "escape from entire confiscation" so far as the miner was concerned.[143] Another writer hailed it as the "miner's Magna Carta" because it legalized what would otherwise have been a trespass.[144] A recent historian adds that it was "one of the few congressional statutes in the history of the frontier that did not try to inflict eastern institutions on the West."[145] On the more pessimistic side, it has also been observed that the act "made it possible for the Comstockers to secure ownership from the federal government without charge."[146]

Granted that thumbnail descriptions are likely to be misleading, a closer look at the statute does lead one to the conclusion that as a lode location law, it was, indeed, confusing. Space does not permit a detailed discussion of the substantive law which developed under the statute,[147] but a few of

[140] 14 STAT. 251 (1866).

[141] CONG. GLOBE, 39th Cong., 1st Sess., 4048-51 (1866).

[142] JULIAN, POLITICAL RECOLLECTIONS 286-92 (1884).

[143] YALE, MINING CLAIMS AND WATER RIGHTS 332-36 (1867).

[144] 1 AMERICAN LAW OF MINING 41 (Martz ed. 1960).

[145] BILLINGTON, WESTWARD EXPANSION 624 (3d ed. 1967).

[146] GREEVER, THE BONANZA WEST: THE STORY OF THE WESTERN MINING RUSHES 107 (1963).

[147] The act is discussed in 1 AMERICAN LAW OF MINING 41-50 (Martz ed. 1960). See also vol. 2, pp. 33-36.

the principal features of the act[148] should be examined briefly.

In the opening section, the act sweepingly proclaims that "the mineral lands of the public domain ... are hereby declared to be free and open to exploration and occupation" subject, however, to the local customs or rules of the mining districts not in conflict with the laws of the United States. Although the wording does not necessarily authorize the removal of ore prior to a patent, this privilege does seem implicit in other portions of the act. The announced policy of "free mining" has continued to the present day except where it has been modified by statutes providing for withdrawals or for leasing of specific minerals (particularly oil and gas). The section seems broad enough to authorize entry for placer as well as lode mining, although subsequent sections are clearly restricted to veins or lodes.

The second section authorizes the patenting of lode mining claims containing veins bearing gold, silver, cinnabar (quicksilver ore), or copper if the claimant has occupied the land and improved it according to the miners' customs and has expended not less than $1,000 in actual labor or improvements. The enumeration of certain metals probably would not exclude other metalliferous lands.[149] To secure a patent, the claimant must file with the local land office a diagram "so extended laterally" as to comply with local mining customs. The patent grants the "mine, together with the right to follow such vein or lode with its dips, angles, and variations, to any depth" although it may enter adjoining land.

Although neither of the first two sections expressly refers to locations made prior to the effective date of the act, such earlier claims were often permitted to go to patent, and the cases indicate that the statute retroactively validates such claims.[150]

Section 3, in describing the procedure for obtaining a patent, stipulates a price of $5 per acre with the title including no more than one vein or lode which shall be named in the patent (no secondary veins). This provision, when read in conjunction with Section 2, would seem to indicate that a patent was primarily intended to grant title to the lode or vein rather than to any particular quantity of the surface.

Section 4, dealing with claims prior to patent, limits such claims to 200 feet "along the vein" for each locator with an additional vein for the discoverer "with the right to follow such vein to any depth, with all its dips, variations, and angles" together with a reasonable quantity of the surface for working the mine. This section fails to indicate what steps must be taken to perfect an unpatented claim. Customary mining law is loosely incorporated into the statute, and the only restrictions on claims seem to relate to length (which was probably not sufficient to justify large investments), the requirement of improvement and the vague reference to "discovery."

Moreover, the statute makes no provision for surface boundary lines although under Section 2 something of this sort must have been contemplated in the requirement that a diagram be filed prior to a patent. In *Mining Co. v. Tarbet*,[151] the Supreme Court held that the act assumes that locations will be made along the vein with straight end lines drawn across the strike (course of the vein). (This was standard practice in California before the act).[152] The locator's extralateral rights, it was said, are determined by the patent which

[148] 14 STAT. 251 (1866).

[149] *Cf.* Northern Pacific Ry. v. Soderberg, 188 U.S. 526, 531-32 (1903).

[150] See, *e.g.*, Ames v. Empire Star Mines Co., 17 Cal.2d 213, 110 P.2d 13, *cert. den.* 314 U.S. 651 (1941).

[151] 98 U.S. 463 (1878).

[152] See Argonaut Min. Co. v. Kennedy Min. & Mill Co., 131 Cal. 15, 63 Pac. 148, 153, *aff'd* 189 U.S. 1 (1903).

fixes the surface lines, although, of course, he may go beyond the side lines. If the claim is erroneously laid out crosswise on the vein, the locator is not entitled to the 200 feet along the vein even though that distance may be designated in the patent. Thus, surface boundary lines were apparently adjustable up to the time of patenting. So far as extralateral rights were concerned, difficulties were encountered in some cases where the end lines were not parallel, and it became necessary to determine the territorial ambit of the extralateral right. It appears that such rights are clearly restricted where they converge on the dip,[153] but it remained undecided whether they were enlarged where they diverged in the direction of the dip. It should be noted that there was no requirement that the vein have an apex within the claim in order to assert extralateral rights.

The Placer Act of 1870

Congressional interest in the mineral lands did not end with the enactment of the 1866 Act. From that time until 1870 there were a number of curious proposals in Congress. It was strange that an appropriation to set up the necessary land offices contemplated by the 1866 Act passed by only a narrow margin.[154] There was much talk about the need for more scientific research on the gold and silver potential of the western mines. In December 1866, the Secretary of the Treasury had reported to Congress on gold production between 1848 and July 1, 1866.[155] J. Ross Browne made a significant study of the mines for the Secretary of the Treasury. He was later succeeded by Rossiter W. Raymond whose popular report was ordered reprinted several times by Congress.[156] Senator Stewart of Nevada championed the establishment of a great mining university to be patterned after the mining colleges in Europe and to be located somewhere west of the Rockies on the Pacific railroad line.[157] Stewart undoubtedly had Nevada in mind. Representative George Julian continued to rant about the way the 1866 Act was passed.[158] An attempt to give the Secretary of the Treasury control over the gold, silver, and quicksilver mines was quickly rejected.[159] There was even a proposal to establish a Federal corporation (to be known as the National Gold and Silver Mining Company of Washington, D.C.) to mine the Montana Territory.[160] Sutro's special legislation came in for heated discussion,[161] and the personal feud between Sutro and Stewart over Comstock Lode matters was aired in rather undignified fashion.[162]

When, in 1869, Julian pressed for repeal of the mining act,[163] Sargent of California immediately countered with an amendment to it authorizing patenting of placer claims which had been omitted from the 1866 Act.[164] The basic premise seemed to be

[153] *Id.*

[154] CONG. GLOBE, 39th Cong., 2d Sess., 1742, 1983-84 (1867).

[155] *Id.* App. 7.

[156] RAYMOND, MINES OF THE WEST: REPORT TO THE SECRETARY OF THE TREASURY (1869).

[157] CONG. GLOBE, 40th Cong., 2d Sess., 556 (1868).

[158] *Id.* at 1712.

[159] *Id.* at 2386.

[160] CONG. GLOBE, 40th Cong., 3d Sess., 320, 835 (1869).

[161] See note 127, *supra*.

[162] CONG. GLOBE, 41st Cong., 2d Sess., 3051-54 (1870). With characteristic bluntness, Senator Stewart recited: "I have told the Senate what the Sutro tunnel is, and I give notice that it is going to take, with rapid progress, fifteen years; with ordinary progress thirty years; and with Sutro's progress, one hundred and fifty years ... I have given notice to those who own stock in New York, Boston, or elsewhere in these great mines, that they need not apprehend any danger from Sutro; that his boring is in Congress, and not in the rock. He bores Congress, and there is where he tunnels ... He has bored me for the last five years."

[163] CONG. GLOBE, 41st Cong., 2d Sess., 102 (1869).

[164] See text following note 148, *supra*.

that with the exhaustion of surface mines, miners found it necessary to build shafts and tunnels in order to get at the gold gravels deep within the "bowels of the mountains"—to borrow an expression popular with legislators at the time. This situation, it was said, imposed greater land requirements. Under the 1866 Act there were no restrictions on the area which might be included in the location of a placer claim, and the size of such claims were determined by the rules and regulations of the miners (often not to exceed 40 acres).[165] The principal debate over Sargent's bill involved the amount of land which should be patentable under a placer claim. Julian, of course, nominally opposed the measure, suggesting that it was comparable to putting new wine into an old bottle.[166] If the principal objective of the Sargent bill was to increase the size of placer claims in order to encourage investment, its author must have experienced mild shock when Senator Cole, also of California, offered an amendment in the Senate reducing claims to 10 acres, contending that the 160-acre provision would encourage exploitation and speculation by "moneyed men."[167] Senator Stewart surprisingly agreed, after first arguing a diametrically opposite position. After several other minor amendments, the Senate passed the House bill.[168] The House, as a matter of principle, immediately rejected the amendments, and a conference committee was appointed. Its report is printed in full in the *Congressional Globe*.[169] Senator Cole, a member of the committee, steadfastly refused to sign the report on the ground that it permitted the miner to acquire too much land.

When Senator Stewart called the compromise bill up again for discussion, he made a most significant statement on the purpose of the bill:

> ... it proposes to extend the principles of the preemption law, so far as possible, consistent with the mining laws, for the purpose of giving the people upon the worked-out mines in California and in the Territories, where they have had placer mines, an opportunity for buying mineral lands, which they need more for agricultural than mineral purposes. These lands are exhausted for mineral purposes, and this bill is intended to allow those people to get homes, and to get titles to the lands.[170]

Stewart was the first to suggest that the bill was not actually necessary to stimulate the mining industry to make more extensive investments. Instead, it was an outright concession to the California miner who had been a failure and who was now to be rewarded with title in fee so that he might put his claim to some agricultural use if possible. Others made the sensible suggestion that if this was the purpose of the bill the land should be sold under the agricultural land statutes.[171] To today's lawyer it may come as something of a surprise that so important a part of the present mining law originated in this fashion.

Under the new amendment to the mining law, placer claims included "all forms of deposit, excepting veins of quartz, or other rock in place."[172] In 1870, at least, miners probably used the term "placer" to describe superficial deposits (chiefly auriferous gravels) in the beds of ancient rivers or valleys.[173] Through oversight, the new amendment did not restrict placer claims to valuable deposits. Placer locations were limited to not more than 160 acres for any one person or association of persons, although it was later held that a patent to a placer claim could be issued for more than 160 acres where adjoining claims had

[165] CONG. GLOBE, 41st Cong., 2d Sess., 314, 316-19 (1869).

[166] *Id. at* 2029.

[167] *Id.* at 3054-55.

[168] *Id.* at 4404.

[169] *Id.* at 4918.

[170] *Id.* at 5043.

[171] *Id.*

[172] 16 STAT. 217 (1870).

[173] See United States v. Iron Silver Min. Co., 128 U.S. 673 (1888); Moxon v. Wilkinson, 2 Mont. 421, 424 (1876).

been purchased by the locator.[174] Title based on adverse possession under the statute of limitations of the state or territory where the land was located was permitted. Placers could be purchased at $2.50 per acre, and the statute did not authorize the reservation of known lodes in placer patents, a point later corrected in the 1872 Act.[175]

The Mining Law of May 10, 1872

It is often mistakenly assumed that the Mining Law of 1872[176] was merely a codification of the two earlier mining statutes. Far from this, it contained numerous substantive changes, although the basic policy of "free mining" was, of course, continued. The principal changes are briefly noted here:

1. The preamble (Section 1) opened with the often overlooked statement "That all valuable mineral deposits in lands belonging to the United States" are open. The term "valuable" was not in the 1866 Act which applied to all "mineral lands." The change is significant, and the exact wording was quite properly emphasized by Mr. Justice Black in a recent decision of the Supreme Court dealing with the problem of what constitutes a "discovery."[177] The above language also substitutes "lands belonging to the United States" for the phrase "lands of the public domain" in the original law. Although the present wording might be broad enough to include "acquired lands," the contrary is usually announced by modern text writers.

2. Future lode locations after discovery of a vein may not exceed 1,500 feet in length along the lode or vein and 300 feet on each side of the middle of such vein at the surface. Local mining district rules or state laws may limit the width of such claims to not less than 25 feet on each side of the middle of the vein at the surface. Surface end lines are required to be parallel. Locations prior to the date of the act continue to be subject to the law existing at the time of the location.

3. Placer claims located by a single individual and based upon a single discovery are limited to 20 acres. An association of individuals may locate up to 160 acres on each discovery.

4. Both placer and lode locators are required to perform $100 worth of development work annually in order to hold their claims as against subsequent locators.

5. Five acres of nonmineral land may be acquired for mill-site purposes.

6. Miners with tunnels 3,000 feet into a hillside have a prior right to all theretofore unknown veins and lodes cut by the tunnel.

7. There were special requirements as to marking of locations and recording of location notices. For the most part, state or mining camp rules were adopted for these purposes.

Despite these rather substantial changes, discussions in Congress[178] dwelt primarily on the provisions of the new act which simplified the procedure for obtaining patents. The substantive changes were rarely referred to. Indeed, Congressman Sargent of California, author of the bill, went so far as to assure his colleagues:

> This bill simply oils the machinery a little; it does not change the principles of the law; it does not change tenures; it simply provides that testimony shall be more easily taken, fees reduced, and generally deals with matters of that kind.[179]

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[174] Smelting Co. v. Kemp, 104 U.S. 636 (1881).

[175] Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, 66 Pac. 487 (1901).

[176] 17 Stat. 91 (1872), 30 U.S.C. § 21 et seq. (1964).

[177] United States v. Coleman, 88 Sup. Ct. 1327 (1968).

[178] Cong. Globe, 42d Cong., 2d Sess., 532-34, 2457-62, 2897-99 (1872).

[179] *Id.* at 532.

Part 2
The Fuel Minerals Legislation

The fact that Congress was unable to deal effectively with the fuel-mineral lands in the public domain will not come as a surprise to anyone familiar with the history of the mining legislation discussed in Part 1 of this chapter. For a period of 56 years the fuel minerals were handled by piecemeal legislation which, for the most part, failed to consider the whole range of policy problems involved in the disposal of fuel resources. The coal-land acts and the Executive withdrawals of coal lands during the Theodore Roosevelt administration will be considered first. This will be followed by a discussion of the oil placer law and the withdrawals of petroleum land which led to the enactment of the Pickett or Withdrawal Act of 1910. Finally, there will be an account of the legislative history of the Mineral Leasing Act of 1920, the first significant deviation from the "free-mining" and "sale" policy of the mining acts of the 19th century.

Sale of the Coal Lands

The first coal act of 1864[180] opened with a recital that the coal beds or coal fields as "mines"[181] had been expressly excluded from the operation of the Preemption Act of 1841.[182] The act then empowered the President to sell these lands at public auction to the highest bidder at a minimum price of $20 per acre in "suitable legal subdivisions." Any lands not thus disposed of were subject to private entry at the minimum price under the general public land statutes. In the following year,[183] a new statute restricted sale of unreserved land to bona fide coal miners who were engaged in actual mining on the public lands in tracts not exceeding 160 acres (according to the legal subdivisions of the government survey) at a minimum price of $20 per acre.

Eight years later, in 1873,[184] the Congress provided that a citizen (or one who indicated an intention to become a citizen) might enter any quantity of *vacant* and *unreserved* coal lands of not more than 160 acres, described according to the government survey. An association of individuals was permitted to enter a 320-acre tract. The minimum price was $10 per acre for land located more than 15 miles from a completed railroad and $20 per acre for land located within 15 miles. Persons in actual possession of coal mines were given preferential rights. An association of not less than four persons could obtain as much as 640 acres if they had expended not less than $5,000 in work and improvements. Section 6 of the act provided that it should not be construed to "authorize sale of lands valuable for mines of gold, silver or copper."

The 1873 Act continued to be the basic legislation for the disposal of coal lands until 1920. Section 6 established what was to become the fixed policy to regard the coal lands as *sui generis.* This should be contrasted with the free-mining policy which Congress had applied since 1866 to the western mines valuable for the precious metals.[185] The reason for distinguishing

[180] 13 STAT. 343 (1864). For general discussions of the coal legislation, see HIBBARD, A HISTORY OF THE PUBLIC LAND POLICIES 518-25 (1924) (1965 reprint); ROBBINS, OUR LANDED HERITAGE 223, 346, 370-71 (1960).

[181] According to 1 LINDLEY, MINES § 140 (3d ed. 1914), the land department did not treat coal lands as mineral lands prior to the 1864 Act.

[182] 5 STAT. 453 (1841).

[183] 13 STAT. 529 (1865).

[184] 17 STAT. 607 (1873), superseded by the Mineral Leasing Act of 1920, 30 U.S.C. § § 181 et seq. (1964 ed.).

[185] See Part 1, "A Closer Look at the Mining Act of 1866."

between coal and the precious metals is not entirely clear. In all probability, the coal lands were more readily discoverable and were, therefore, thought to have a greater potential for raising revenue. Moreover, in exposing the coal lands to sale in 1864, Congress was acting much as it had only a few years earlier when it authorized the sale of land valuable for copper and iron ore.[186] Whatever justification there may have been for the sale of coal land in 1864, it is clear that the policy became obsolete within a relatively short period of time. The coal lands were to become a major national issue in the first decade of the 20th century. In the interim, a few special mining statutes which applied to nonmetalliferous deposits were enacted. The Building Stone Act of 1892[187] made land chiefly valuable for building stone subject to entry under the placer law. The oil lands in 1897[188] and the saline lands in 1901[189] were similarly made subject to placer locations.

The Conservation Period. In the 19th century our great natural resources—water, land, forests, minerals—were regarded as virtually inexhaustible. In the minds of most Americans, conservation was, therefore, an irrelevant concept. It is true that some inroads were made on the prevailing philosophy by the creation, for example, of the forest reserves and a few national parks,[190] but it was not until the Theodore Roosevelt administration after the turn of the century that a real breakthrough came about. In rapid succession, the new administration proposed to control the Federal grazing lands, to increase the national forests, to withdraw the coal, oil, and potash lands from sale, to reserve waterpower sites, and to reclaim the desert under the Reclamation Act of 1902. Gifford Pinchot, James R. Garfield, W. J. McGee, and others dramatized the conservation movement to the public until by the end of the Roosevelt administration it had become an accepted national policy, grudgingly accepted by many, of course, but nonetheless the country—even the West—knew that there was no turning back to the haphazard public law of the previous century.

During the first decade, the furor over the creation of the national forests somewhat eclipsed the Roosevelt program of mineral conservation. Although less has been written about this aspect of the general conservation movement than about water and forests, the politics behind coal and oil provide one of the most fascinating chapters in the history of the public domain. It is not the purpose here to assess

[186] See Part 1, "The Period of Sale."

[187] 27 STAT. 348 (1892).

[188] 29 STAT. 526 (1897), superseded by the Leasing Act of 1920, 30 U.S.C. § § 181 et seq. (1964 ed.).

[189] 31 STAT. 745 (1901).

[190] Although Congress authorized the President to withdraw land for forest reserves (later called "national forests") as early as 1891 (26 STAT. 1103), no administrative machinery was adopted to supervise these lands until 1897. 30 STAT. 34 (1897). During the Theodore Roosevelt administration, more than three times as much timberland was withdrawn as had been set aside in previous administrations. As part of the conservation movement, the Forest Service of the Department of Agriculture was set up in 1905. 33 STAT. 628 (1905). See Note, 60 YALE L. J. 456 (1951). In 1907, the opponents of conservation attached an amendment to the agricultural appropriation bill, which provided that the President could not set aside additional national forests in the six northwestern states. Unable to veto the bill, Roosevelt set aside 16 million acres of forest land in these states 2 days before he signed the bill. ROOSEVELT, AN AUTOBIOGRAPHY 404-5 (1913) (1924 reprint). The extent to which this action rankled members of Congress is illustrated by the fact that as late as 1910 a section was added to the Pickett Act limiting withdrawals for national forests.

Beginning in 1872 (Yellowstone, 17 STAT. 32), 28 national parks have been created by acts of Congress. Withdrawals were made to carry out the provisions of these statutes. It is probable that the President has an "implied" power to establish national parks. A 1950 Act forbade any further extension or establishment of national parks in Wyoming. 64 STAT. 849 (1950). On mining locations in national parks, see 1 AMERICAN LAW OF MINING 326-30 (Martz ed. 1960).

the real objectives of the Pinchot-Roosevelt conservation program. Whether it was part of the total drive against monopoly or whether it was motivated by a sincere desire to obtain the most effective utilization of resources is a matter over which historians have disagreed. Donald C. Swain points out that the two objectives were not always compatible.[191] In any event the political aspects, at least, involved a life and death struggle between the West and the science-oriented eastern conservationists.

The Coal Land Withdrawals. In 1906 Theodore Roosevelt was seriously concerned with the administration of the Federal coal lands in the West. The Oregon timberland fraud had only recently been uncovered,[192] and there were more than rumors of abuses under the coal laws. The acreage limitations in the 1873 statute were generally acknowledged to be an impediment to the effective development of certain types of coal fields. The result was that many coal and railroad companies sought to evade these limitations either by dummy entries or by entries processed under the agricultural land statutes. An Interstate Commerce Commission hearing in Salt Lake City in 1906 uncovered many such "fraudulent" entries,[193] and in Wyoming, the Federal officials brought suit against the Union Pacific Railroad and a number of coal companies which were charged with evading the 1873 Act.[194]

The President and the Interior Department undoubtedly considered the possibility of a sweeping withdrawal of the coal lands from entry under all the public land acts. The probable reaction of Congress to such a move was not exactly an "imponderable" at the time. Nevertheless, on June 20, 1906,[195] Senator Robert M. LaFollette of Wisconsin sent up a trial balloon. He proposed a concurrent resolution to the effect that the Secretary of the Interior be requested to investigate the coal, lignite, and oil deposits of the United States and to report to Congress on the extent of, and the least wasteful methods of mining, such deposits. He also proposed that the President be authorized to withdraw from entry and sale all lands which in the judgment of the Director of the Geological Survey contained these minerals. The preamble recited that this was necessary to prevent private corporations from acquiring a monopoly in the coal lands and to conserve the supply of these minerals for the benefit of the whole people. When Congress did not respond, the Senator apparently sought out the more sympathetic ear of the President. Beginning on July 26 and continuing through November 12, 1906, the Acting Secretary of the Interior, at the request of the President, issued orders withdrawing from all forms of entry approximately 66 million acres of land where "workable coal is known to occur."[196] The land involved

[191] See Swain, *Federal Conservation Policy 1921-1933*, 76 UNIV. CAL. PUB. IN HIST. 1, 5 (1963). The author refers to Bates, *Fulfilling American Democracy: The Conservation Movement 1907 to 1921*, 44 MISS. VALLEY HIST. REV. 29 (1957); and HAYS, CONSERVATION AND THE GOSPEL OF EFFICIENCY, THE PROGRESSIVE CONSERVATION MOVEMENT, 1890-1920 (1959).

[192] See Callaghan, *Senator Mitchell and the Oregon Land Frauds* 1905, 21 PAC. HIST. REV. 255 (1952).

[193] 41 CONG. REC. 4666 (1907) (Remarks of Mr. Lacey).

[194] LARSON, HISTORY OF WYOMING 378-79 (1965) (2d printing 1966).

[195] 40 CONG. REC. 8763 (1906).

[196] The original order as well as the two modifications mentioned in the text appear in 41 CONG. REC. 2614 (1907) (remarks of Rep. Mondell). The estimates as to the number of acres withdrawn vary considerably. The figure in the text is taken from the reliable source, PEFFER, THE CLOSING OF THE PUBLIC DOMAIN 69 (1951). Other extensive withdrawals occurred between 1907 and 1909, but "for the most part these were only from entry under other than the mineral land laws." PEFFER, 108. Peffer concludes that these later withdrawals were designed to protect prospectors from entries under the Homestead, the Desert Land, and the Building Stone Acts of land suspected of containing oil.

was located in the States of Colorado, North Dakota, Montana, Oregon, Washington, Utah, Wyoming and the Territories of New Mexico and Alaska. On December 17, these withdrawal orders were modified so as to preclude these lands "from coal entry merely." A further modification on January 15, 1907, provided that the withdrawals did not impair any rights acquired in good faith under the coal-land laws as of the date of the withdrawals.

Twenty years later the leading commentator on the oil-lands issue described Roosevelt's coal withdrawals as "spectacular, dramatic, and really shrewd and effective."[197] The congressional reaction, however, was less than enthusiastic.[198] Without explaining his coal-land withdrawals, the President in a special message to Congress on December 17, 1906, summarized his view of the problem:[199]

> The present coal law limiting the individual entry to 160 acres puts a premium on fraud by making it impossible to develop certain types of coal fields and yet comply with the law. It is a scandal to maintain laws which sound well, but which make fraud the key without which great natural resources must remain closed. The law should give individuals and corporations, under proper government regulation and control, (the details of which I shall not at present discuss) the right to work bodies of coal large enough for profitable development. My own belief is that there should be provision for leasing coal, oil and gas rights under proper restrictions.

At this date, it seems clear that the President's primary concern was that the coal-lands act impeded the development of the vital fuel minerals by encouraging fraudulent entries under other public land statutes of land primarily valuable for coal.

Representative Frank W. Mondell of Wyoming launched a vitriolic attack on President Roosevelt's coal withdrawals on February 8, 1907.[200] Years later, Mr. Roosevelt described Mondell as "a Congressman who took the lead in every measure to prevent the conservation of our natural resources" and "who consistently fought for local and private interests as against the interests of the people as a whole."[201] Be that as it may, it is clear that Mondell's arguments, though highly legalistic, were competently presented, and the questions which he raised were precisely the ones considered by the Supreme Court 8 years later. His statement was essentially an attack on the legality of Executive withdrawals. He maintained that the Property Clause[202] of the Federal Constitution conferred the power to dispose of the public domain on Congress, not on the Executive. He then classified previous Executive orders which had been upheld as follows: (1) those made pursuant to express legislative authority; (2) withdrawals made for the purpose of carrying out the terms of certain congressional grants, *e.g.*, grants-in-aid to railroads; and (3) reservations made for public purposes under no specific authority of Congress but under the general power vested in the President to administer the government. He concluded that the coal withdrawals did not fall within any of these categories because their purpose was not to set aside specific land for a public purpose but rather to suspend the operation of land laws which Congress had previously adopted. Representative Lacey of Iowa, on the other hand, contended that the with-

[197] ISE, THE UNITED STATES OIL POLICY 310 (1926) (2d printing 1928).

[198] On Dec. 13, 1906, the House passed a resolution requesting the Secretary of the Interior to list all lands withdrawn since July 1, 1906, and to state reasons for the withdrawals. 41 CONG. REC. 354 (1906) (Rep. Mondell's resolution), 4665 (1907). See also 40 CONG. REC. 9665 (1906). Later, as evidence of the antagonism to the Interior Department, a bill was introduced in the Senate creating a public land court which had appellate jurisdiction over the Interior Department land decisions. 41 CONG. REC. 2076 (1907).

[199] 41 CONG. REC. 450 (1906) (House); 41 CONG. REC. 2077 (1907) (Senate).

[200] 41 CONG. REC. 2614-19 (1907).

[201] ROOSEVELT, AN AUTOBIOGRAPHY 363, 393 (1913) (1924 reprint).

[202] U.S. CONST. ART IV § 3 cl 2.

drawals were made for the purpose of proposing new legislation on the coal lands. Mondell also vigorously attacked the conservation policy of the Interior Department as "paternalistic" and as "state socialism."

On February 13, 1907,[203] Roosevelt sent another message to Congress in which he urgently recommended legislation on the coal lands. In contrast to his earlier message, he stressed primarily the need for conservation of the remaining mineral fuels in the public domain, not only to prevent waste but also in order to reserve a portion of the remaining coal resources for future generations. He felt that "mineral fuels, like the forests and navigable streams, should be treated as public utilities." He recommended that the most effective way to deal with this resource would be to enact "such legislation as would provide for title to and development of the surface land as separate and distinct from the right to the underlying mineral fuels in regions where these may occur, and the disposal of these mineral fuels under a leasing system on conditions which would inure to the benefit of the public as a whole." Although he did not specify the details of such legislation, he felt the system should be administered in the "spirit of generosity" which had characterized our earlier disposition of the public lands. After noting that 30 million acres of coal fields had already passed into private ownership, he suggested that legislation of the type he proposed would give the Congress ample opportunity to determine how the two systems—private ownership and public leasing—operating side by side actually worked. As a concession to the states' rightists, whom he said were justifiably interested in the rapid development of the "lusty young commonwealths," he ventured that the leasing system could be administered with the "least possible" interference by the Federal government.

[203] 41 CONG. REC. 2806-8 (1907).

In the second session of the 59th Congress, a number of bills providing both for severance of surface and minerals and for leasing were introduced by Senator Hansbrough (North Dakota),[204] Representative Volstead[205] and Senator Nelson (Minnesota),[206] Representative Lacey (Iowa)[207] and Senator LaFollette (Wisconsin).[208]

Doomed by the lethargic attitude of Congress toward the coal problem, all of these bills failed to survive referral to the Public Lands Committees of the two Houses. Roosevelt and his successor continued, however, to withdraw coal lands. The effect of a general withdrawal was to give the government an opportunity to classify the land. Land found to be valuable for coal might then be sold under the coal acts for more than the minimum price prescribed in the 1873 Act. Robbins points out that between 1906 and 1909 public coal lands sold for $75 to $100 per acre.[209] Between August 21, 1907, and November 1, 1909, 4,165,542 acres were segregated, but as Peffer points out these were mainly to protect bona fide oil prospectors from those who were attempting to obtain coal lands under the agricultural land laws.[210] By March 4, 1909, half of all the withdrawn coal lands had in fact been restored to entry.[211] This indicates the great difficulty the government experienced during this entire period with the process of classification. In retrospect, the coal lands problem was undoubtedly a relatively minor crisis, since between 1873 and 1910, only 3,806 coal land entries, totalling 544,244.92 acres were actually made.[212] During these years,

[204] 41 CONG. REC. 489 (1906).

[205] 41 CONG. REC. 630 (1907).

[206] 41 CONG. REC. 611, 1788 (1907).

[207] 41 CONG. REC. 1246, 2492 (1907).

[208] 41 CONG. REC. 1483 (1907). It was this bill which was singled out for criticism by Rep. Mondell in his famous statement.

[209] ROBBINS, OUR LANDED HERITAGE 346 (1960).

[210] PEFFER, THE CLOSING OF THE PUBLIC DOMAIN 108 (1951).

[211] *Id.*

the so-called "fraudulent entries" under the nonmineral acts were always a troublesome problem, of course, and these are not reflected in the above statistics on coal-land entries. Entries allegedly in violation of the coal acts touched off one of the most famous political controversies in the first years of the Taft administration. The Ballinger-Pinchot feud, culminating in 1909-10, resulted in a bitter congressional investigation and has had repercussions in the politics of conservation far beyond the specific coal lands involved.[213]

Since 1907 Roosevelt had advocated a system which would permit agricultural entries on withdrawn coal lands provided the minerals were reserved to the United States. Experience had embarrassingly revealed that a great deal of valuable agricultural land in the West was underlain with coal and phosphate. In 1907 Roosevelt announced to Congress that experience in other countries of the world had proved that coal mining and agriculture need not be mutually exclusive.[214] To a considerable extent, this was a concession to western politicians, and on the last day of his term, he signed an act permitting severance.[215] The statute provided that a good faith entryman under the nonmineral laws of land *later* classified as valuable for coal might nevertheless receive a patent to the surface, subject, however, to a reservation of the coal to the United States with a right to prospect for and mine the coal. In the early days of the Taft administration, this act was liberalized so as to permit entry under the nonmineral land acts even after withdrawal or classification as coal land.[216] The entryman must, of course, comply with the requirements of the nonmineral law under which his entry was made and, again, he could receive only a limited patent. A saving clause also authorized a limited patent to good faith entrants on classified land prior to the effective date of the act. The reserved coal deposits remained subject to disposal by the government. The act also contained provisions for adjusting problems arising between the owner of the surface and the owner of the minerals. A 1914 statute permitted new patents to be issued where the land was later classified as noncoal after a limited patent had been given by the government.[217]

Throughout the first 15 years of the new century there were several statutes applicable to the coal lands in the Territory of Alaska. In 1900 the coal-land laws were extended to Alaska, [218] but since the 1873 Coal Act contemplated sales in governmental subdivisions, the act could have no practical effect because the territory remained largely unsurveyed. To remedy this, a 1904 statute extended coal locations to unsurveyed land in Alaska, the locations to be set off in rectangular tracts containing 40, 80, or 160 acres "with north and south boundary lines run according to the true meridian" and described with reference to natural or permanent artificial monuments.[219] A 1908 Act provided that persons locating coal lands prior to November 12, 1906 (or pursuant to instructions issued by the Secretary of the Interior on May 16, 1907), might consolidate their locations by including in a single claim not more than

[212] 1 INTERIOR DEPARTMENT, ANNUAL REPORT 120 (1910).

[213] Details may be found in MOWRY, THE ERA OF THEODORE ROOSEVELT 1900-1912 250-59 (1958); PINCHOT, BREAKING NEW GROUND (1947); Ganoe, *Some Constitutional and Political Aspects of the Ballinger-Pinchot Controversy,* 3 PAC. HIST. REV. 323 (1934); Richardson, *The Politics of Conservation: Crusades and Controversies,* 70 UNIV. CAL. PUB. IN HIST. (1962). See also note 219, *infra.*

[214] Note 203, *supra.*

[215] 35 STAT. 844 (1909), 30 U.S.C. § 81 (1964 ed.).

[216] 36 STAT. 583 (1910), 30 U.S.C. § § 83-85 (1964 ed.).

[217] 38 STAT. 335 (1914), 30 U.S.C. § 82 (1964 ed.).

[218] 31 STAT. 658 (1900).

[219] 33 STAT. 525 (1904). Under this act, the famous Cunningham claims involved in the Ballinger-Pinchot controversy were cancelled in Andrew L. Scofield, 41 I.D. 176, 240 (1911).

2,560 contiguous acres of coal land.[220] A further provision invalidated any combinations in restraint of trade. Apparently no patents were issued under the 1908 Act.[221] The result was that no coal lands were developed in Alaska from the date of the general withdrawal order on November 12, 1906,[222] until 1914. At that time, the earlier statutes were repealed and leasing was authorized for the first time in Alaska.[223] The statute will be considered in connection with the public land history of the oil laws.

The Petroleum Lands

We are inclined to associate oil in the United States with the famed strike at Titusville, Pennsylvania, in 1859 when "Colonel" Edwin L. Drake, an erstwhile railroad conductor who took over a defunct oil company, pumped oil from a depth of 69½ feet.[224] What proved to be the first commercial well in this country was so unexpected that one of Drake's assistants, a blacksmith called "Uncle Billy," was compelled to fill every whiskey barrel in town with the "black gold."[225] At the outset, the well produced around 1,000 gallons of oil a day. It is said that the price of $20 per barrel at this time created a boom comparable to the California gold rush.[226] Although this may be something of an exaggeration, the decade which followed was characterized by frenzied prospecting and wild investments in oil companies.

Although crude oil was originally valuable for the production of a high-grade illuminant, lubricating oils were also discovered as a joint product. The demand for crude oil in the last 2 decades of the 19th century led to extensive oil development in areas of the United States which had long since passed into private ownership. It began in Pennsylvania and New York and progressed from there to the southeastern states, to Ohio and Indiana, then to Texas and the mid-continental states. The great Texas well in the Spindletop district in 1901 spouted oil 160 feet high and produced from 5,000 to 100,000 barrels daily—and, lacking Uncle Billy's presence of mind, it was 10 days before they saved any oil! Spindletop introduced a new era[227] in private oil development, the history of which has been carefully recorded by John Ise.[228]

Turning, however, to the public domain states, the California history is particularly interesting.[229] Although there was early experimentation in the 1850's in extracting gas for illumination from asphaltum, also used extensively for the paving of streets, there was little oil activity in California until the mid-sixties when a group of speculators, spurred on by the excitement in Pennsylvania, purchased an immense quantity of land in southern California (Ventura). One of the promoters, John B. Church, prevailed upon his brother-in-law, Benjamin Silliman, Jr., then a distinguished scientist at Yale University, to report on the potential for oil in this area. Testing samples of seepage which had been given him by Church, Pro-

[220] 35 STAT. 424 (1908).

[221] 2 LINDLEY, MINES 1148 (1914). For an example of an application cancelled for fraud, see United States v. Munday, 222 U.S. 175 (1911).

[222] The date of the general withdrawal order. See Circular, 35 I.D. 572 (1907).

[223] 38 STAT. 741 (1914).

[224] Even the lease under which Drake drilled is legendary. See WILLIAMS, MAXWELL AND MEYERS, CASES ON OIL AND GAS 141 (2d ed. 1964).

[225] Dolson, *Sitting on a Gusher*, 10 AMERICAN HERITAGE 65, 71 (February 1959).

[226] 11 ENCY. OF THE SOCIAL SCIENCES 439 (1954 reprint).

[227] See MCKAY AND FAULT, TEXAS AFTER SPINDLETOP (1965).

[228] ISE, THE UNITED STATES OIL POLICY 310 (1926) (2d printing 1928).

[229] The best account of early oil companies in the West is WHITE, FORMATIVE YEARS IN THE FAR WEST: A HISTORY OF STANDARD OIL COMPANY OF CALIFORNIA AND PREDECESSORS THROUGH 1919 (1962).

fessor Silliman issued a report which was unbelievably optimistic. His samples, it later turned out, contained kerosine imported from the East. The corporations, organized by Church and his associates and financed widely by eastern investors, failed to discover a single well capable of producing oil commercially, and the resulting scandal ruined Silliman's professional career. Other companies reported small findings during this period, and some refineries were organized to experiment with distilling local crude oil in the hope of finding a high-grade lubricant. These efforts were for the most part failures.

Oil fever was revived in the mid-seventies when several wells were put down in Pico Canyon near Los Angeles. During the next 15 years much of the prospecting was for the first time on land in the public domain. Oil mining districts, similar to those in the early gold fields, were organized. In the early 1890's oil was discovered near Coalinga, Fresno County, and in 1892 E. L. Doheny drilled the first successful well in Los Angeles. The famous "Blue Goose" was brought in in Coalinga in 1897. The Whittier and Ventura County fields were being exploited, and a new discovery was made in the famous well on Means Ranch near Bakersfield. Ise has summarized the oil development during the first years of the 20th century:[230]

> Many of the iniquities of our national oil policy have been illustrated in California history. First, there was the tendency to over-production, where offset wells are necessary to protect holders of leases, regardless of the demands for oil, or the price at which it could be sold ... In the second place, there was the consumption of oil for low uses, particularly for fuel. In the third place, there was the constant struggle of independents against monopoly control.

The Placer Laws. The legal aspects of oil mining on the public domain must begin with the Placer Act of 1870.[231] Although it is unlikely that Congress had petroleum in mind when it enacted the Placer Act, the statute was broad enough to include oil: "all forms of deposit" except veins of quartz or other rock in place. There was early authority that the quoted phrase included anything recognized by the standard authorities as mineral.[232] In 1883, Secretary of the Interior Teller, however, felt that whether the placer law applied to oil lands was "an undetermined question."[233] The Department continued to assume tacitly that oil lands were locatable.[234] This position was abruptly changed in 1896 in the *Union Oil Co.* case[235] in which the Secretary announced that land containing petroleum was not locatable as a placer mine. His legalistic, though "unscientific," analysis is worth preserving:

> It is true, scientifically speaking, that petroleum is a mineral. But the same may be said of salt and of phosphates, and of clay containing alumina, and other substances in the earth. Yet it does not follow that they come within the meaning of the mineral statutes ... It would seem as if oil was regarded by science as a mineral only because of its inorganic character, as a sort of distinction from a vegetable product.

The *Union Oil Co.* case was later reversed by Acting Secretary Ryan who conceded the long standing policy of the Department, and felt that "the demands of simple justice would seem to require that there should be no departure from that construction at this late day . . ."[236] Despite the reversal, efforts to secure remedial legislation were already underway. Although two early bills were introduced by Senator White,[237] the bill which really bore fruit was H.R. 9606, introduced by Representative Mondell, who, it will be remembered,

[230] Ise, *supra* note 228, at 91-92.

[231] See Part 1, "The Placer Act of 1870."

[232] See, *e.g.*, W. H. Hooper, 1 I.D. 560 (1881).

[233] Downey v. Rogers, 2 I.D. 707, 709 (1883).

[234] Roberts v. Jepson, 4 I.D. 60 (1885); Piru Oil Co., 26 I.D. 117 (1893).

[235] 23 I.D. 222 (1896). See also 24 I.D. 183 (1897).

[236] Union Oil Co., 25 I.D. 351 (1897).

[237] 29 CONG. REC. 395, 540 (1896).

actively opposed the later coal-lands withdrawals.[238] The Mondell bill was replaced by S. 3551 (Senator Clark), and after its prompt passage in the Senate, was approved in the House in 1897 after very little debate.[239] Apparently its main purpose was to clarify the 1896 Interior ruling. The 1897 Act provided simply that petroleum lands might be entered and patented under the placer laws. A savings clause permitted patenting of land previously "filed upon, claimed, or improved as mineral, but not yet patented . . ."[240]

It is unfortunate that Congress did not review the problems presented by petroleum mining when the Placer Act was before it in 1897. The act proved to be unworkable in three respects.[241] In the first place, by applying to oil lands what was essentially a law for the mining of metalliferous minerals, the act perpetuated the rule that the prospector acquired no legal right to be protected in his occupancy prior to an actual discovery. But oil in the West, at least, could be found only after expensive equipment for drilling had been brought upon the land and a reservoir had been tapped, activities which to say the least could not be conducted in a clandestine atmosphere. The result was that as soon as there were rumors of oil prospecting, there converged on the scene countless "professional" entrymen whose nuisance value had to be reckoned with. Holders of military bounty warrants, railroad indemnity rights, and forest lieu rights could not be prevented from harassing prospectors because no one could demonstrate that the land was actually valuable for minerals at that time. It is true, in later years, that the oil operator was afforded some protection against this assortment of nonmineral claimants when many of the local courts relaxed the traditional rules applicable under the *possessio pedis* doctrine.[242] Secondly, in requiring the performance of annual assessment work, the oil prospector was encouraged to mine even though there was no immediate prospect for a market. Third, the acreage limitations of the Placer Act were regarded by everyone as too small to permit efficient mining. The result was that dummy entrymen were constantly used to avoid these restrictions.

Oil Land Withdrawals. From time to time after 1904, the land department withdrew from agricultural entry a substantial amount of land thought to be valuable for oil in California, Louisiana, Oregon, and Wyoming. The purpose was more to protect oil prospectors than to conserve the supply of oil for the public. Much of this land was in fact restored to entry at the insistence of the agricultural claimants. By 1909 the public had become accustomed to exaggerated accounts of the vast supply of oil in the West, and in that year, the Director of the Geological Survey reported to the Secretary of the Interior that the western oil lands were passing into private ownership so rapidly that this vital resource would soon disappear. "After that, the government will be obliged to repurchase the very oil that it has practically given away . . ."[243] It was suggested that immediate action be undertaken to conserve a supply of petroleum for the government's own use. The recommendation was approved by the Interior Department, and on September 27, 1909, President Taft, without advance warning, issued the following proclamation:[244]

Temporary Petroleum Withdrawal No. 5

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accom-

[238] See note 201, *supra*.

[239] 29 CONG. REC. 874, 1240, 1314, 1394, 1408-1409, 1466, 1470, 1762.

[240] 61 STAT. 526 (1897).

[241] See Ise, *supra* note 228, at 296.

[242] The cases are discussed in 1 AMERICAN LAW OF MINING § 1.26 (Martz ed. 1960).

[243] See United States v. Midwest Oil Co., 236 U.S. 459, 466-67 (1915).

[244] *Id.* at 467.

> panying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public-land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination.

Over 3 million acres of land valuable for oil in California and Wyoming were affected by the order. Some of the land had previously been withdrawn from agricultural entry; some had in fact already passed into private ownership and could not, therefore, be affected by the order. As to land previously withdrawn, the order simply converted these lands into withdrawals from *all* forms of disposition.

The withdrawal order must certainly have been President Taft's most audacious official act, for he was most cautious in matters of constitutional law.[245] His lingering doubts as to the constitutionality of his action stemmed from the fact that the Federal Constitution empowered Congress, not the President, to make rules and regulations respecting the property of the United States. Roosevelt and Taft were in basic disagreement on the role of the Chief Executive in the administration of the public domain.[246] Although the issue may seem relatively mild today, the historical importance of this matter of constitutional law must not be underestimated. It loomed large in the background of all the Roosevelt withdrawals, and congressional peevishness is evidenced in the action curbing the Presidential withdrawal power for national forests in 1907 and 1910.[247] It continued to be one of the most hotly debated subjects in the 6 years or so which followed the Taft withdrawals.

The Pickett Act. In a message to Congress on January 14, 1910, President Taft stated:[248]

> The power of the Secretary of the Interior to withdraw from the operation of existing statutes tracts of land, the disposition of which under such statutes would be detrimental to the public interest, is not clear or satisfactory. This power has been exercised in the interest of the public, with the hope that Congress might affirm the action of the Executive by laws adapted to the new conditions. Unfortunately, Congress has not thus far fully acted on the recommendations of the Executive, and the question as to what the Executive is to do is, under the circumstances, full of difficulty. It seems to me that it is the duty of Congress now, by a statute, to validate the withdrawals ... and to authorize the Secretary of the Interior temporarily to withdraw lands pending submission to Congress of recommendations as to legislation to meet conditions or emergencies as they arise.

In line with President Taft's suggestion, Representative Pickett of Iowa introduced H.R. 24070 3 months later.[249] As one of three so-called conservation measures,[250] the bill empowered the President to withdraw public lands from location, settlement, filing and entry in two situations: (1) for examination and classification; and (2) for the purpose of recommending new legislation to Congress respecting the with-

[245] Nine years later, with the benefit of hindsight, Senator La Follette could remark, "Taft's opinion upon constitutional matters does not appeal to me and ... ought not to have any weight with anybody else." 58 CONG. REC. 4747 (1919).

[246] ROOSEVELT, AN AUTOBIOGRAPHY 362-63 (1913) (1924 reprint): "As to all action of this kind there have long been two schools of political thought .... The course I followed, of regarding the executive as subject only to the people, and, under the Constitution, bound to serve the people affirmatively in cases where the Constitution does not explicitly forbid him to render the service, was substantially the course followed by both Andrew Jackson and Abraham Lincoln. Other honorable and well-meaning Presidents, such as James Buchanan, took the opposite and, as it seems to me, narrowly legalistic view that the President is the servant of Congress rather than of the people, and can do nothing, no matter how necessary it be to act, unless the Constitution explicitly commands the action. ... My successor in office took this, the Buchanan, view of the President's powers and duties."

[247] See note 190, *supra*.

[248] 45 CONG. REC. 621-22 (1910).

[249] 45 CONG. REC. 4310 (1910).

[250] The others included the act to permit surface entries on coal lands (36 STAT. 583 [1910]) and a reclamation act. 36 STAT. 835 (1910).

drawn land. The Secretary of the Interior was required to report withdrawals to Congress, and all prior withdrawals were ratified and confirmed "as if originally made under this act." Mr. Mondell of Wyoming, who only a few years earlier had so vigorously opposed Roosevelt's coal-land withdrawals,[251] reported the bill favorably out of the Public Lands Committee of which he was Chairman. Mondell argued for the bill with a certain amount of conviction. Coming as it did from one who was certainly no arch-conservationist, this may seem to be a strange change of heart. John Ise has suggested that Mondell may not have made as great a concession to conservation as it would seem.[252] There was, it is true, a "joker" in the bill. Although ostensibly authored by Pickett, Mondell most certainly was not one to accept legal advice from anyone, and presumably he had something to do with the drafting. The controversial clause provided that after withdrawn land was in fact classified, the land was then "restored to appropriation and disposition under the laws applicable thereto." All other types of withdrawals, however, were to remain in force until revoked by the President or by Congress. The act of classification thus automatically returned withdrawn land to disposition under the applicable public land acts. The President was not given a free hand to "lock up" the public domain by making withdrawals for classification. The effect of the provision was to minimize what generally seemed to be a most expansive gesture to the Chief Executive.

Ignoring for the most part the "joker" in the bill, Mondell addressed himself in the debates primarily to the withdrawal power of the Executive. In a most disarming fashion, he admitted that:[253]

> . . . we must recognize this fact, that in the country at large public sentiment was behind President Roosevelt, and has been behind President Taft, and that the principal complaints that have been made ... have been not that there was too much withdrawal, but that there was not enough withdrawal, or that there was too much restoration.

Representative Martin of Colorado objected that under the bill vast amounts of public land might be tied up for 10 or 15 years, awaiting classification.[254] Robinson of Arkansas felt that congressional ratification after a withdrawal should be made mandatory, and he generally favored overhauling all public land laws.[255] Several Congressmen objected to the report of the minority of the Public Lands Committee which offered two amendments protecting bona fide claimants who had initiated claims prior to the withdrawal. They felt this amendment would enable a number of fraudulent entries to go to patent.

The House eventually passed the bill,[256] rejecting the two amendments and others introduced from the floor. The House was pro-conservation at the time, and the bill met with opposition only from southern Democrats and a few westerners.

A substitute bill was offered in the Senate by the Public Lands Committee[257] and by the time of its passage,[258] the House version was unrecognizable. Numerous amendments were made on the floor. The arguments pro and con were the same tirades the Senate had heard since 1906. Some distrusted or favored the bill because they thought it would restrict the President's withdrawal power.[259] Others thought it confirmed a power which did not exist.[260] Senator Bailey of Texas favored turning the public lands over to the

[251] See note 201, *supra*, and text.

[252] Ise, *supra* note 228, at 314.

[253] 45 CONG. REC. 4644 (1910).

[254] 45 CONG. REC. 4644 (1910).

[255] 45 CONG. REC. 5055 (1910).

[256] 45 CONG. REC. 5103 (1910).

[257] 45 CONG. REC. 6880 (1910).

[258] 45 CONG. REC. 8580 (1910) (context of bill as passed by Senate).

[259] See, *e.g.*, 45 CONG. REC. 7461-62 (1910) (Remarks of Mr. Nelson).

[260] 45 CONG. REC. 7538 (1910) (Remarks of Mr. Clark).

states.[261] Senator Heyburn of Idaho opposed all conservation legislation as "socialistic."[262] And so on. Although the "debates" occupy considerable space in the *Congressional Record,* there was really little interest in the bill. The East had already decided how to vote, and the western opposition bored everyone else to the point where only 19 votes on both sides could be garnered to vote on one particular amendment.[263] The House reluctantly concurred in the Senate bill[264] and on June 25, 1910, it was signed by President Taft.[265] To many conservationists it was totally inadequate.[266] To the western oil operators it was something of a victory.

The bill introduced by Representative Pickett was hardly a model of legislative drafting. Although it may have been less effective as a conservation measure, the Senate version which passed was more carefully constructed. Yet, the act did leave unanswered a number of problems. In the first place, in recognizing an Executive withdrawal power, it carefully avoided any confirmation of the legality of previous withdrawals: ". . . this Act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this Act . . ." The validity of prior withdrawals was, therefore, left up to and finally decided by the courts. But the act went beyond this. It authorized the President in the future to "temporarily" withdraw at his discretion land from the operation of the general public land acts for the following purposes: waterpower sites, irrigation, classification of lands, or for "other public purposes" which were required to be specified in the withdrawal orders. The word "temporarily" has no special significance because a later sentence provided that any withdrawal or reservation should remain in force until revoked by the President or by Congress. The "joker" in the original bill—that classification automatically amounted to a restoration of withdrawn land—was omitted.[267]

The withdrawn lands were not, however, completely removed from the land laws. They continued to be open to "exploration, discovery, occupation and purchase" under the mining laws so far as the latter applied to minerals other than coal, oil, gas and phosphates. In 1912, the latter provision was changed to permit location for "metalliferous minerals."[268]

As a concession to oil operators, the act also provided that persons, who in good faith occupied oil and gas land at the date of any future withdrawal and who were diligently performing work leading to a discovery and so continued, would not be prejudiced by the withdrawal. This clause proved to be one of the great headaches in the 10 years which followed. Homesteads were excepted from the act to a limited extent, and, opening up an old wound,[269] it was provided that forest reserves could not be created in the future in six named states.

After several years of squabbling about the usurpation of congressional power over the public domain by Executive withdrawals, Congress did have the opportunity in 1910 to wrestle the entire conservation program from the control of the President. It showed no inclination to do so. This can only be a reflection of the general sentiment in the country which was unsympathetic to the attitude of Congress toward conservation in the previous decade. Rep-

[261] 45 CONG. REC. 7542 (1910).

[262] 45 CONG. REC. 8042 (1910).

[263] 45 CONG. REC. 7552 (1910) (Mr. Clark's amendment for automatic restoration of withdrawn lands).

[264] 45 CONG. REC. 8673 (1910).

[265] 45 CONG. REC. 9119 (1910).

[266] It was frequently said to be a "reservation" rather than a "conservation" measure. See Peffer, *supra* note 210, at 118.

[267] See note 252 *supra.*

[268] 43 U.S.C. § 141 (1964 ed.).

[269] See note 190, *supra.*

resentative Mondell's statement, quoted above, must certainly have been an astute political observation.

After the passage of the Pickett Act, the 1909 petroleum withdrawal was ratified and confirmed by the President on July 2, 1910, under the authority of the new act. In the decade which followed, substantially all of the unappropriated public domain was withdrawn from nonmetalliferous location under the mining laws. In order to conserve an adequate supply of oil for the Navy, two naval reserves were established by Executive order in 1912: No. 1 located in Elk Hills and No. 2 in Buena Vista Hills, Kern County, California. The theory seemed to be that the most effective way to conserve oil for the future use of the Navy was to keep it stored in the ground. These withdrawals were followed in 1915 by the Teapot Dome Reserve No. 3 near Casper, Wyoming (9,581 acres); in 1916 by the naval oil shale reserves in Colorado and Utah (132,028); and in 1923 by the extensive Reserve No. 4 in Alaska.

After 1910 land known to be valuable for metalliferous minerals was rarely the subject of a withdrawal order. Undoubtedly this was because the Pickett Act itself provided that withdrawn land continued to be subject to mining location. One exception occurred in 1912, when 9,787 acres were withdrawn in the Warren mining district in Bisbee, Arizona.[270] Investigation by the United States Geological Survey had revealed the possibility of deepseated deposits of copper ore, which were not susceptible to surface discovery so as to comply with the Mining Law of 1872. The Interior Department felt that before expensive drilling or deep shafting could occur, attempts would be made to obtain title to the land by means of state selections or other nonmineral entries. Accordingly, the land was simply withdrawn from nonmineral entries. Much of it was later restored. This is the only known situation in which hard mineral locators were protected in their prospecting from agricultural or other nonmineral entrymen.

The constitutionality of the original withdrawal in 1909 by President Taft was finally tested 6 years later in *United States v. Midwest Oil Co.*[271] After the Interior Department had concluded that the order was valid,[272] the government instituted suit to recover public land occupied by the defendant oil company in Wyoming and to obtain an accounting for oil which allegedly had been illegally appropriated. The land in question had been entered 6 months after the withdrawal order, and, after a discovery of oil, the defendant had filed a location certificate and extracted oil. Judge John A. Riner of the Federal District Court for Wyoming sustained the defendant's demurrer, holding that the withdrawal was void.[273] Astonishing as it may seem for a matter of such importance, the trial judge's opinion was handed down orally from the bench.[274] Even the Circuit Court of Appeals did no more than to certify certain questions to the Supreme Court, which then ordered the entire record sent up for review. The importance of the legal issue is apparent from the fact that several *amici curiae* filed briefs. Among them were Messrs. Pillsbury and Sutro of San Francisco, longtime counsel for Standard Oil of California. As a matter of fact, Mr. Sutro had quite consistently after 1909 advised his client that it should proceed on the assumption that the withdrawal order might be upheld.[275]

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[270] 1 ANNUAL REPORT, DEPARTMENT OF THE INTERIOR 432 (1913).

[271] 236 U.S. 459 (1915), discussed in Colby, *The New Public Land Policy With Special Reference to Oil Lands*, 3 CAL. L. REV. 269, 276-85 (1915); 1 AMERICAN LAW OF MINING 79-80 (Martz ed. 1960).

[272] *In re* Lowell, 40 I.D. 303 (1911).

[273] A contemporary decision holding that the 1909 order was invalid is United States v. Midway Northern Oil Co., 216 Fed. 802 (S.D. Cal. 1914).

[274] See Colby, *supra* n. 271 at 277; 1 LINDLEY, MINES 440, n. 83a (1914).

[275] See White, *supra* note 229, at 438.

Since the Pickett Act was not directly involved the issue was confined to the validity of the 1909 withdrawal. After the case was twice argued, Justice Lamar delivered the opinion of the majority upholding the order. Justice McReynolds, who had only recently come from the office of the Attorney General, did not participate. There was a vigorous dissenting opinion by Justice Day. This was concurred in by Justices Van Devanter and McKenna, whose votes came as no surprise since they were from Wyoming and California, the only two states affected by the withdrawal.

The majority opinion was reluctant to attack the real issue, for it opened with the disclaimer: "We need not consider whether, as an original question, the President could have withdrawn from private acquisition what Congress had made free and open to occupation and purchase."[276] It then noted that prior to 1910 at least 252 Executive orders making reservations for various purposes had been issued without prior statutory authorization from Congress. In all these Congress had simply acquiesced, and since "government is a practical affair intended for practical men,"[277] the Court felt that Congress had impliedly consented to the practice.[278] The dissent pointed out that previous decisions sustaining specific withdrawals had involved situations in which Congress either had already approved a policy of dedicating the specific land for the purpose for which the withdrawal was made or had adopted conflicting policies which necessitated emergency administrative action to clarify the ambiguity. The two opinions actually reflect a basic disagreement as to the role of the Chief Executive.

It was clear from the terms of the Pickett Act that it had no retroactive effect[279] and could not, therefore, be regarded as ratifying the 1909 withdrawal. Still, it is likely that the act did influence the decision of the Court to some indeterminable extent. There seemed to be no question but that the Pickett Act itself was valid.

In the *Midwest Oil* case, the Court noted that the majority of the Senate Committee on Public Lands felt that the Pickett bill "operated to restrict the greater power already possessed"[280] by the President. The question thus raised was not, however, before the Court and has not been answered to the present time. On the one hand, it has been argued that the act superseded the power which the President was held to have in the *Midwest* decision (the "implied consent" power). If it was an all-inclusive codification of the authority delegated to the President in this area, any withdrawal would necessarily have to be in accordance with the terms of the 1910 statute. On the other hand, if it merely supplemented the right which already existed, withdrawals could be made either under the act or under the implied powers of the President. The choice of the type of withdrawal would determine whether the land withdrawn remained open to location for metalliferous minerals. In 1941[281] Attorney General Robert H. Jackson ruled that there were, indeed, two legal bases for withdrawals: the implied power and

[276] 236 U.S. at 469.

[277] *Id.* at 472.

[278] The *Midwest* case was similarly explained in Sioux Tribe of Indians v. United States, 316 U.S. 317, 326 (1942). Judicial hostility to Executive aggression by no means ended with the *Midwest* case, however. See Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 79, (1952). Mr. Justice Frankfurter, concurring, did not feel that the *Midwest* case was persuasive on the issue presented in the Steel Seizure Case.

[279] A proviso in sec. 2 states: "That this and the preceding section shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June 25, 1910." 36 STAT. 847 (1910).

[280] 236 U.S. at 482-83.

[281] Withdrawal of Public Lands, 40 OPS. ATT'Y. GEN. 73 (1941).

the Pickett Act.[282] His opinion was based in part on the theory that this had been the construction placed on the act by the Chief Executive and the Interior Department since 1910, an interpretation which had been acquiesced in by Congress. The theory of the *Midwest* case was thus employed to determine the scope of the Withdrawal Act. Add to that the congressional acquiescence in the Attorney General's construction since 1941 and you have a rule that is not likely to be overturned by the Supreme Court at this late date.[283] Most writers have gone along with this interpretation of the Pickett Act,[284] emphasizing that it is unlikely that Congress intended that permanent withdrawals, such as military or naval reservations, should be subject to metalliferous mining locations.[285]

The current problem is therefore perhaps not so much the proper interpretation of the Pickett Act as the question of determining on what basis a particular withdrawal was made. In a recent departmental case,[286] a 1941 withdrawal order recited: "By virtue of the authority vested in me as President of the United States and by the Act of June 25, 1910, it is ordered that described lands be reserved and set apart . . . as a refuge."[287] The Interior Department observed that over a period of 3 years preceding the order, a number of Executive orders were made invoking both the implied power and the authority delegated by the Withdrawal Act. Mining locations were expressly authorized in some of these. The Department then concluded that a full exercise of Presidential authority is intended unless there is a specific provision that mining activities shall not be prohibited. This construction, of course, nullifies the spirit of the Withdrawal Act.[288]

Relief Legislation. As is often the case in the legislative process, controversies of short-range importance tend to postpone the solution of real problems. This was certainly true during the years from 1910 to 1920 when almost every session of Congress considered what was to be done with the withdrawn petroleum lands. It is not an exaggeration to say that the debates ranged from proposals to hand over all the public oil lands to the states, to plans for sale or leasing, or a combination of the two.

Although the real problem was clear (*i.e.*, leasing as opposed to sale), the "touchy" question in the background always was whether anything should be done for oil companies which were caught, at the time of the 1909 Taft withdrawal, in various stages of prospecting: activities which ranged anywhere from "paper locations" to actual drilling, short of discovery.

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[282] It is not intended to suggest that there are no other bases for withdrawals. Congressional legislation may authorize a specific withdrawal, or withdrawals may be made to carry out the terms of certain general land-grant statutes.

[283] The most recent statement appears to be in Arizona v. California, 373 U.S. 546 (1963) in which Mr. Justice Black citing the *Midwest* case, stated: "We can give but short shrift at this late date to the argument that the reservations either of land or water are invalid because they were originally set apart by the Executive."

[284] I expressed some doubt about this conclusion in 1960. See 1 AMERICAN LAW OF MINING 80 81 (1960). Several writers assume that implied powers exist. See Parriott, *Mining Rights in Public Land*, 34 TEX. L. REV. 892, 894, n.16 (1956); Palmer, *Problems Arising Out of Public Land Withdrawals of the Atomic Energy Commission*, 2 ROCKY MT. MIN. L. INST. 77, 81 (1956); Lowe, *Withdrawals and Similar Matters Affecting Public Lands*, 4 ROCKY MT. MIN. L. INST. 55 (1958); Phipps, *Leasing and Mineral Development of Withdrawn Public Lands*, 10 ROCKY MT. MIN. L. INST. 261, 269 (1965). The Interior Department similarly follows this view. P & G Mining Co., 67 I.D. 217 (1960).

[285] The distinction between the implied power and Pickett Act withdrawals is often said to depend upon whether the withdrawal is for a permanent or temporary purpose.

[286] P & G Mining Co., 67 I.D. 217 (1960).

[287] 6 FED. REG. 1016 (1941).

[288] *Cf.* Noel Teuscher, 62 I.D. 210 (1955). On the effect of withdrawals on mining locations and oil and gas leasing, see 1 AMERICAN LAW OF MINING c. vii, 299 (Martz ed. 1960).

Although this is only of historical interest now, it is worth noting in some detail because it was the principal factor in the failure of Congress to adopt a leasing system for 10 years. Petitions for relief for the California operators were constantly the stumbling block to legislation.[289]

Confident that the courts would declare the withdrawal unconstitutional, many oil companies continued prospecting or drilling on withdrawn land on which no discovery had been made before September 1909. The California oil interests convinced the Senate committee considering the Pickett bill to insert a savings clause protecting bona fide operators who were in diligent prosecution of work leading to a discovery at the date of any *prior* or any *future* withdrawal.[290] There was no agreement as to what type of activities were contemplated by this provision. But what is more important, the act expressly refused to make any pronouncement about prospecting activities initiated after the 1909 withdrawal.[291] When President Taft, after the enactment of the statute, reconfirmed his earlier order on July 2, 1910, and withdrew approximately the same land, the legal rights of occupants whose activities began after 1909 were thrown into utter confusion. If they were to be judged as of the date of the second withdrawal order, they would seem to be protected by the Pickett Act. Although this conclusion might conceivably be unfair to companies that had observed the original order, still it cannot be emphasized too much that there was a real, honest division of opinion on the constitutionality of the withdrawal order. As has been observed, even the President had grave reservations.

To complicate the picture somewhat, the Interior Department had announced in 1909 that companies which had purchased claims on which there had been no discovery at the time could not obtain patents even though oil was later found.[292] The oil companies managed, without too much difficulty, to get Congress to reverse this ruling in the Assignments Act of 1911.[293]

Further problems arose when the Interior Department announced that it intended to "recapture" land which had been patented to the Southern Pacific Railroad under its land grant and which later turned out to be valuable for petroleum. Much of this land, located in the withdrawn fields in California, had been purchased by the oil companies. Later, in 1912, the President withdrew the two naval reserves in California previously mentioned. Most of the land in these areas had already been patented to the railroad. Other patents were based on "dummy" locations and were subject to possible cancellation for fraud. In 1913, the government instituted several suits to recover these patented lands and for an accounting for oil produced and sold illegally.[294] The indication was that the Pickett Act was going to be construed strictly as affording no protection to producers commencing prospecting after September 1909, but before the second withdrawal in 1910. As a result, refineries were reluctant to purchase crude oil from these producers because they too might be accountable to the government. If they could not secure relief from the producers, the purchasers would pay for their oil twice. The government

[289] The best account of efforts to obtain relief legislation will be found in White, *supra* note 229, at 439-59. The account in the text is indebted to Mr. White's material. Relief legislation is also discussed in Ise, *supra* note 228, at 309-23 (1926).

[290] Section 2 provides: "That the rights of any person who, at the date of any order of withdrawal, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work . . ."

[291] See note 279, *supra*.

[292] H. H. Yard, 38 I.D. 59 (1909).

[293] 36 STAT. 1015 (1911).

[294] Ise, *supra* note 228, at 320.

opposed any proposed agreement with the purchasers which might afford them some protection if the producers were later denied patents. The Operating Agreements Act of 1914[295] to some extent protected operators who commenced drilling within 3 months after the second withdrawal.

When the *Midwest* decision[296] upheld the 1909 withdrawal, the government stepped up its litigation to nullify earlier patents in California. Relief legislation in the form of the Phelan and other proposals sought to protect drillers who commenced operations prior to the second withdrawal in 1910. Plans to relinquish some land in the naval reserves in return for leases were made by the oil companies and vigorously opposed by the Secretary of the Navy. When agreements could not be reached, the production of crude oil allegedly declined, and, at one time, there were threats of commandeering the California oil fields to avert a possible shortage of oil for the Navy.

Eventually, with the adoption of the Mineral Leasing Act of 1920,[297] some relief provisions were adopted, although they were not, of course, as liberal as the oil people hoped for. Throughout the 10-year period the pressure put directly on two Presidents, the Secretaries of the Interior and the Navy, and the Attorney General, as well as the congressional committees, by the oil interests was fantastic. Pinchot and other conservationists aligned themselves with the Secretary of the Navy who opposed all such legislation. Secretary of the Interior Lane, who was admittedly to some extent sympathetic to the California oilmen, was bitterly criticized by Pinchot and the eastern newspapers. Professor Ise, usually objective, is quite critical of the Secretary. He attributes the latter's equivocal position to the fact that he was a lawyer and "the training of a lawyer often leads to an exaggeration of individual rights and an inability to see social rights . . ."[298] On the other side of the coin,[299] his statement is rather typical of the Roosevelt conservationists who were fanatically inclined to condemn anyone whose views differed, even slightly, from their own. They saw a monopolistic conspiracy behind every derrick. This attitude left its mark on both the Taft and Wilson administrations which, because of the congressional backlash, had great difficulty obtaining conservation legislation of any type.

The Period of Reservation: 1910-1920. It will be remembered that a series of acts between 1909 and 1912 permitted nonmineral entries on public land valuable for coal and provided for the issuance of limited patents.[300] Similar legislation was enacted in 1912, which allowed surface entries on oil, gas, and phosphate land located in Utah only.[301] When Representative Stephens of Texas questioned the wisdom of confining the act to Utah, he was informed by Representative Mann of Illinois that Representatives of the other western states did not favor such legislation and, therefore, these "gentlemen decided to try it first on the dog."[302] The experiment apparently proved to be harmless, for on July 17, 1914, an act was passed authorizing all forms of nonmineral entry on withdrawn land containing these minerals.

During the Woodrow Wilson administration there was constant pressure to open

[295] 38 STAT. 708 (1914).

[296] See note 271, *supra.*

[297] 30 U.S.C. § 181 (1964 ed.)

[298] Ise, *supra* note 228, at 337.

[299] White, *supra* note 229, is more sympathetic to the oil operators.

[300] 35 STAT. 844 (1909); 36 STAT. 583 (1910); 37 STAT. 105 (1912).

[301] 37 STAT. 496 (1912). The original Senate bill was not so restricted. See 48 CONG. REC. 1728, 1756, 3478-79 (1912). A similar statute permitted selections by the State of Idaho of phosphate and oil lands. 37 STAT. 687 (1913).

[302] 48 CONG. REC. 11339 (1912). 38 STAT. 509 (1914) provided for agricultural entry on lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals.

up the oil lands. The failure of Congress to take any position on leasing for an entire decade has frequently been criticized by historians. John Ise's thorough study convinced him, however, that this appraisal is not in accord with the facts. His basic position, often overlooked, is found in the following brief passage:

> During this time there was always overproduction of oil from privately owned lands, and there was never any need or justification for opening any public oil lands . . .[303]

Two timid steps toward leasing were taken in 1914 when the Alaska coal lands, after considerable debate, were put on a leasing basis,[304] and in 1917, because of the importance of potash in the manufacture of explosives, the Potash Leasing Act was adopted.[305] As far as the oil lands were concerned, every session of Congress during the decade after 1910 saw bills proposing either outright transfer to the states of these public lands or providing for leasing under various types of controls. There would be no profit in tracing all of these proposals. Most were short-lived after being referred to the Public Land Committees. Two of the most important, however, should be noted. The first was introduced by Representative Scott Ferris of Oklahoma, Chairman of the House Committee on Public Lands, in April 1913. Mr. Ferris' proposal was an administration measure providing for complete revision of the laws applicable to coal, oil, gas, phosphate, potassium, and sodium. It is important because it advocated a mixture of sale and leasing. It provided for prospecting permits on tracts which might vary in size, depending upon how closely they were located to producing wells. If oil was discovered, the licensee could obtain a patent to one-fourth of the land. It was debated at length,[306] and there was considerable dispute as to the Federal-State sharing of royalties. A compromise bill introduced by Senator Walsh of Montana in the first session of the 65th Congress was defeated largely because of Pinchot's objection to the relief provisions.[307]

The Mineral Leasing Act of 1920. The first session of the 66th Congress saw a new bill on the oil lands reported from the Committee on Public Lands by its Chairman, Senator Reed Smoot of Utah.[308] Although he had been opposed to leasing in the past, Senator Smoot now conceded that it was clear that Congress would consider opening up the withdrawn oil lands only if the committee reported a bill providing exclusively for leasing. He lamented the fact that 6.5 million acres of oil lands and 2.7 million acres of phosphate land had been withdrawn from all development. He noted also that 3.5 million acres of oil-shale land had been classified and that 43.7 million acres of coal land had been withdrawn, only 27.3 million acres of which had in fact been classified.[309] Confronted with this situation, most (but not all) western Senators reluctantly agreed that leasing was the only solution. Typical of their attitude was the statement by Arizona Senator Ashurst who said he would "hold his nose and vote for the bill."[310]

The Smoot bill, on the whole, was favorable to the western interests.[311] The 36 sections of the bill cannot be discussed here in detail. The basic scheme was to provide different rules for leasing proved and unproved oil fields. In the case of the former, leases could be issued on competitive bidding in tracts of not more than 640 acres and for a period of 20 years at a 12½ per-

[303] Ise, *supra* note 228, at 327.

[304] 38 STAT. 741 (1914). See Alaska Coal-Leasing Bill, Hearing before the Committee on Public Lands, House of Representatives, 63d Congress, 2d Sess., on H. R. 13137 (1914).

[305] 40 STAT. 297 (1917).

[306] 51 CONG. REC. 14945-50, 14953, 14964 (1914).

[307] 58 CONG. REC. 4112, 3705, 10382 (1919).

[308] 58 CONG. REC. 3886 (1919).

[309] 58 CONG. REC. 4112 (1919).

[310] 58 CONG. REC. 4250 (1919).

[311] The bill appears in 58 CONG. REC. 4054-57 (1919).

cent royalty. There was a privilege of renewal on terms to be prescribed by the Secretary of the Interior. Where the land was "wildcat" or unproved land, the Secretary was authorized to issue prospecting permits for 2 years, covering not more than 2,560 acres. On discovery, the permittee could obtain a lease to one-fourth of the land for 20 years at a royalty of 5 percent, with a nominal rental and a right of renewal. The permittee also had a preference right to a lease of the remainder of his 2,560-acre tract at a royalty of 12½ to 25 percent.

The royalties from all leases (except in Alaska) were to be divided as follows: 45 percent to the Reclamation Fund; 45 percent to the state for schools; 10 percent to the Federal Treasury. There were numerous provisions relating to monopoly control, alien ownership, waste of oil and gas, flooding of the oil sands, drilling of offset wells, and relief to operators on withdrawn land.

The Senate debated the bill over a period of 14 days. In an atmosphere of tired resignation, the attendance often consisted of no more than 12 or 14 Senators. It is true that occasionally one would hear extravagant statements from Senator King of Utah (". . . I am absolutely opposed to the leasing system, the paternalism, the bureaucracy, the autocracy, the un-American system that the leasing system entails . . .")[312] or from Senator Fall of New Mexico (". . . collectively as a government in business matters we are and always have been and always will be a failure."[313] There has "never been a mine opened in the United States by any geological or other experts."[314]). But, on the whole, the debate in both the Senate and the House concentrated more rationally on the specific aspects of the proposed legislation. The main issues discussed at length were: (1) whether government development and operation of the oil lands would be a feasible alternative; (2) the generosity of the relief sections; (3) restrictions in the Smoot bill on alien ownership of leases, either directly or indirectly through stock ownership; (4) the division between the states and the Federal government of royalties; and (5) the loss of taxes which the states would suffer under a system in which title to the oil lands was reserved in the Federal government. A few observations on these various points from both the Senate and the House are given below. The House eventually amended the Senate bill rather drastically,[315] and its recommendations were finally adopted by the conference committee.[316]

The threat that the government might take over and operate the oil lands was not voiced for the first time in the 1919 debates.[317] Senator Walsh of Montana felt that this was one good reason for adopting a leasing system immediately.[318] On the other hand, a newcomer from Massachusetts by the same name advocated government operation because of the "failure of private enterprise."[319] An unusual amendment, offered by Senator Kirby of Arkansas, would substitute for the bill under consideration a brief statement authorizing the President at his discretion to mine coal, oil, and gas on the public domain under the direction of the Secretary of the Interior when the "public exigency" may require.[320] Obviously made to needle the western in-

[312] 58 CONG. REC. 4111 (1919).

[313] 58 CONG. REC. 4290 (1919). Albert B. Fall later became Secretary of the Interior in the Harding administration. His conviction for accepting a bribe in connection with the Teapot Dome scandal might be taken as an indication that he was not so astute in business matters himself. Teapot, Fall *et al.* will be considered in Part 3 of this chapter.

[314] 58 CONG. REC. 4284 (1919).

[315] 58 CONG. REC. 7299 (1919).

[316] 58 CONG. REC. 7796 (1919).

[317] See note 296 and text which follows.

[318] 58 CONG. REC. 4112 (1919).

[319] 58 CONG. REC. 4171 (1919).

[320] 58 CONG. REC. 4283 (1919).

terests and with no hope of success, the amendment elicited painful astonishment from Senators Fall of New Mexico, King of Utah, and Walsh of Montana, whose reactions were thoroughly enjoyed by the Senator from Arkansas. Kirby's thesis was that if the supply of oil was as vital to the future of the Navy as everyone had suggested, and if the time had actually come to unlock the public domain reserves, why not authorize the government to keep for the public what belonged to it as a matter of right? He felt confident that the government could mine as economically as private enterprise and even conceded that the government might pay taxes to the states on the oil lands. The western Senators could only rejoin that private enterprise alone was capable of financing such an undertaking. The Kirby amendment was rejected after only a few hours of debate.[321] Senator La Follette of Wisconsin later offered an amendment which would permit the government to set a fair price on all products (whether in crude or refined form) derived from the leased lands.[322] He felt that the Standard Oil Company which, he alleged, indirectly controlled large operations in California and particularly in the Salt Creek Field in Wyoming would, despite the use originally of dummy entrymen, eventually obtain leases under the bill. Price-fixing would eliminate manipulation by the company of its prices for crude and refined oil. Only Senator Lenroot of Wisconsin felt constrained to reply. He argued that it would be impracticable to fix prices for refined products because of the difficulty of tracing the oil produced under the public domain leases into the company's many refineries. Falling upon "indifferent ears," the amendment was defeated, although, surprisingly enough, it did receive 10 votes.[323]

[321] 58 CONG. REC. 4416 (1919).
[322] 58 CONG. REC. 4733 (1919).
[323] 58 CONG. REC. 4736 (1919).

Senator La Follette became very interested in the bill, attacking primarily the relatively liberal relief provisions proposed in the Senate bill. For one thing, he felt that the measure would destroy the naval reserves. His amendment to exclude the reserves from the Senate bill was defeated.[324] It was inevitable that the old controversy between Secretary of the Interior Lane and Secretary of the Navy Daniels over the reserves would be rehashed, and La Follette made a dramatic appeal by introducing letters from Daniels and Assistant Secretary of the Navy Franklin Roosevelt.[325] The arguments over the relief provisions centered mainly around the question whether prospectors who entered after the September 1909 withdrawal should receive any consideration at all in view of the fact that they were technically trespassers, despite the fact that they sometimes relied in good faith on the belief that the withdrawal order was unconstitutional. La Follette introduced a list of the oil companies which would profit handsomely from the provision.[326] Among them, of course, was the perennial target of the Progressives, the Standard Oil Company.

The bill as finally passed by Congress in 1920 contained relief provisions inserted by the House which were less favorable to the oil companies.[327] It protected those who had entered prior to the Taft withdrawal of July 2, 1910 (confirming the earlier withdrawal) provided they had continued operating in good faith after discovery. They were permitted to relinquish their claims in return for 20-year leases at a minimum royalty of 12½ percent, with payments to be made, of course, on past production. Not more than one half of the area in the geologic structure (in any event, not to exceed 3,200 acres) could be leased to any

[324] 58 CONG. REC. 4745, 4767, 4773 (1919).
[325] 58 CONG. REC. 4759 (1919).
[326] 58 CONG. REC. 4766 (1919).
[327] 30 U.S.C. § 227 (1964 ed.).

one claimant. In the naval reserves, leases were given only on producing wells, unless the President in his discretion chose to lease the remainder. It is not known how many leases were eventually granted by the government under the relief provisions. It is doubtful that there were as many as the 10-year controversy would seem to have warranted. It is said that Standard Oil of California, at least, was eligible for leases on 1,400 acres outside the naval reserves and to wells on 960 acres inside Reserve No. 2. The company's claims were sold very shortly after the enactment of the new statute.[328]

The problem of alien ownership—described by Professor Ise as a "delicate and baffling question"[329]—was discussed at length in both Houses of Congress. Great Britain's international oil policy at this time was quite openly criticized,[330] and many legislators feared that retaliatory action would be taken by Mexico.[331] "Open door" abroad and "closed door" at home, Ise points out, created what was obviously an impossible dilemma for most Congressmen. Eventually, a compromise based on the notion of reciprocity was reached in the 1920 Act: aliens were prohibited from owning interests in leases either directly, or indirectly through stock, only if they were nationals of countries which prohibit similar ownership by Americans.[332]

The allocation of a portion of the royalties to the states in which the public lands are located has always been a controversial issue. The Smoot bill in the Senate had been generous to the states. (The distribution, it will be remembered, was 45 percent to the states, 45 percent to the Reclamation Fund, and 10 percent to the Federal government.) This was not surprising since the Public Lands Committee consisted largely of westerners. The matter of apportionment was debated more extensively in the House than in the Senate. At the outset, it appeared that there were royalties due on something like $20 million of oil produced in the past on land which was within the relief provisions of the new act. Representative Sinnot of Oregon suggested that this fund be distributed: 10 percent to the Federal government, 70 percent to the Reclamation Fund, 20 percent to the states in which the lands were located.[333] After the chairman's ruling that Sinnot's motion was not germane because the bill contemplated only the distribution of future royalties, Representative Ferris of Oklahoma moved a substitute amendment which would authorize all royalties to be paid into the Reclamation Fund.[334] This apparently had been the recommendation of the administration. The Ferris amendment was eventually withdrawn for lack of support. The conference committee of the two Houses finally worked out a compromise which became part of the new law; 52½ percent to the Reclamation Fund; 37½ percent to the states in which the lands are located for education and roads; 10 percent to the Federal Treasury.[335]

It would be inappropriate here to outline the detailed provisions relating to oil and gas in the Leasing Act as it was finally adopted on February 25, 1920. The basic format was essentially the same as the Smoot bill. The House eliminated the provision for maximum royalties on leases, cut down the relief provisions, permitted more extensive ownership by aliens, and modified the apportionment of royalties be-

[328] See White, *supra* note 229, at 459.

[329] See Ise, *supra* note 228, at 347.

[330] 58 CONG. REC. 7513-15, 7529 (1919).

[331] In 1921, it is estimated that British and American oil investments in Mexico amounted to at least $300 million. ENGLER, THE POLITICS OF OIL: PRIVATE POWER & DEMOCRATIC DIRECTIONS 193 (1961) (Phoenix ed. 1967).

[332] 30 U.S.C. § 181 (1964 ed.).

[333] 58 CONG. REC. 7649, 7771 (1919).

[334] 58 CONG. REC. 7651, 7652 (1919).

[335] 30 U.S.C. § 191 (1964 ed.).

tween the states and the Federal government. The act has, of course, been supplemented several times since 1920 and changed in several material respects.

Since substantial space in this chapter has been devoted to the history of coal resources in the public domain, brief attention should be given to the provisions of the new law relating to coal leases. The act gives the Secretary of the Interior authority to issue prospecting permits, limited licenses, and leases.[336] The limited license is used primarily to permit municipalities in times of emergency to mine coal in small areas for the benefit of impoverished families. Two-year permits to prospect for coal in unproved land may be issued in the discretion of the Secretary. There are acreage limitations and the Secretary requires a clear showing that market conditions justify the permit. The prospecting permit is a prerequisite for the issuance of a preference lease (which presupposes that coal in commercial quantities exists in the area). When conditions warrant, leases, not to exceed 2,560 acres, may also be offered by the Department on the basis of competitive bidding. There are provisions for minimum rentals and royalties.

The Leasing Act was the first major change in the public mining laws in more than 50 years. It was the second major change in 120 years. That the mining laws were outmoded, at least as to oil and gas, long before 1920 was a truism seemingly known to everyone except Congress. Now and then a cry in the wilderness came from Interior or the Office of the President, and sometimes it could be heard in the House of Representatives. The Senate more often than not seemed to be too influenced by what is tritely referred to as "special interests." It is no wonder that a contemporary writer has cynically described the Leasing Act as[337]

> ... a belated effort to safeguard the remnants of the nation's lands west of the Alleghenys after a century and a half of speculation and exploitation masked by exalted references to manifest destiny and internal improvements and tempered by safety-valve theories for hard-pressed Eastern workers and homestead settlements for sturdy family farmers.

[336] 30 U.S.C. § § 202-208 (1964 ed.). Departmental regulations will be found in 43 C.F.R., Part 3130 (1967). Coal leasing is discussed generally in 2 AMERICAN LAW OF MINING § § 10.43-10.46 (Martz ed. 1960).

[337] Engler, *supra* note 331, at 81.

Part 3
Contemporary American Mining Law

The history of public mining law in this country has yet to record a plateau of comparative quietude. The events which have transpired since the enactment of the Mineral Leasing Act of 1920 are, in their own setting, as unusual as the dramatic episodes of the past. The major problems arising during this later period will be covered in other special reports which are being prepared for the Public Land Law Review Commission. To attempt to evaluate what has been done to provide solutions for these problems would be to infringe upon their domain. It would be naïve to attempt to judge the operation of contemporary mining law without the necessary data to support the conclusions. Accordingly, Part 3 of this chapter will simply recount the major "crises" during this period, with a somewhat closer look at those periods which are now "ancient history" in mining law.

The Twenties: On the Mixing of Oil and Politics

John Ise has briefly recorded the chaotic frenzy which generally prevailed in the oil reserves after the passage of the Mineral Leasing Act in 1920. Advance men—scouts—had already prospected the most likely areas, and claimants by the droves were ready to file applications once the bill was signed by the President. Applications began to pour in by telegraph and, within a year, 5,000 applications for permits had been filed with the Land Office. In some areas there were miraculous "discoveries" which coincided with the passage of the act. By the end of June 1924, over 32,000 applications were received, but out of all this activity, only about 45 leases were actually issued.[338]

Teapot Dome. All this was eclipsed by the bizarre politics of the period. We have previously discussed the four Naval Petroleum Reserves in California, Wyoming, and Alaska, which were established in 1912, 1915, and 1923 to insure an adequate supply of oil for the future needs of a navy which was beginning to convert its battleships from coal to oil.[339] Naval oil shale reserves were also established in Utah and Colorado in 1916. We have noted the role which the naval reserves played in the failure to obtain congressional legislation on oil and gas leasing on the public domain until 1920.[340] The reserves were destined also to highlight the brief administration of President Harding in the Teapot Dome scandal, which involved Reserves No. 1 and 2 in California and No. 3 (Teapot) in Wyoming. "Teapot" is from an unusual rock formation which dominated the reserve near Casper, Wyoming.

Within 6 months after the passage of the Mineral Leasing Act Congress gave the Secretary of the Navy extensive jurisdicition over the reserves.[341] He was authorized to take possession and to develop the reserves at his discretion. This included authority to execute contracts or leases and to "use, store, exchange or sell" the oil and gas royalties therefrom. In 1921, Albert B. Fall, a former Senator from New Mexico, was appointed Secretary of the Interior by President Harding. His position on the Leasing Act has already been observed in his statement deploring the role of government in business.[342] His later involvement in the reserves clearly substantiated the early suspicion of conservationists like Gifford Pinchot that Fall was basically opposed to their program. Shortly after his appointment, Mr. Fall persuaded the Secretary of the Navy, Edwin Denby, to relinquish control of the administration of the reserves to the Interior Department. This was effected by a secret and unpublished Presidential order making the transfer.[343] The conservationists had already been outraged by Fall's early proposal to transfer Pinchot's beloved Forest Service of the Department of Agriculture to the Interior Department. And, when rumors began to leak out that Teapot was being leased to Fall's friends, a frontal attack on Fall's administration of the Department was launched. Prodded by Senator LaFollette, Congress authorized an investigation[344] which revealed a strong possibility that Fall, who had since resigned, had accepted bribes to execute petroleum leases on the reserves. After a period of embarrassing but characteristic silence, President Coolidge finally bypassed his own Justice Department and appointed Owen J. Roberts (later Associate Justice of the Supreme Court for 15 years) and Atlee Pomeroy, both of whom were in no way associated

[338] ISE, THE UNITED STATES OIL POLICY 352-54 (1926).

[339] See Part 2, "Pickett Act."

[340] See Part 2, "Relief Legislation."

[341] 41 STAT. 812, 813 (1920).

[342] See Part 2, n. 314.

[343] The order was probably invalid. See United States v. Pan-American Petroleum Co., 55 F.2d 753, 769 (9th Cir. 1932) *cert. den.* 287 U.S. 612 (1932).

[344] Joint Resolution, 43 STAT. 5 (1924).

with the government, to act as a team to bring suit to cancel the leases and to prosecute those responsible for the fraud.

When Fall's activities were uncovered it was found that he had secretly and without competitive bidding leased all of Teapot Dome to Harry Sinclair, and large portions of the California reserves to E. L. Doheny.[345] The legal authority to execute the leases was, of course, questionable in view of the statute referred to above giving the Secretary of the Navy jurisdiction over the reserves. But it was the details of the bribery which triggered off the biggest political scandal of the century. It touched leading figures in both political parties, ruined the careers of several who were accidentally involved with the major participants, and disenchanted a generation of Americans about the business of government as well as the oil industry. Although space does not permit a discussion of the details of the episode,[346] it does not seem inappropriate to spell out briefly the general terms of the contracts and leases with Sinclair and Doheny.

In Doheny's contracts relating to Reserve No. 1, the government agreed to exchange its royalties in crude oil from leases on the reserve for a promise to construct storage tanks in Pearl Harbor, Hawaii. The contracts were actually with Pan American Petroleum and Transport Company, a corporation controlled by Doheny. The company also agreed to deliver oil for use by the Navy at Pearl Harbor and certain eastern ports. Leases subsequently executed on the reserve were assigned to an affiliate, Pan American Petroleum Company. Doheny was also involved in Reserve No. 2 in which drainage had in the past been regarded as a serious matter because of the numerous private holdings within the area.[347] Earlier leases with other persons had been executed for drilling off-set wells and no impropriety had ever been suggested. In *Pan-American Petroleum & Transport Co. v. United States,*[348] the Supreme Court cancelled two contracts with Transport and two leases in Reserve No. 1 with Pan American. Both corporations were controlled by Doheny, who had given Secretary Fall $100,000 in connection with the leases. The court found that there existed a corrupt conspiracy between Fall and Doheny to secure for the company leases of all unleased land in the reserve; that the leases were not authorized by the Naval Reserve Act since there was no evidence of possibility of loss of oil through drainage; and that the contracts to exchange oil royalty for facilities were beyond the powers of the Secretary under the act. The company was required to account for all oil illegally produced and was not credited with the cost of construction work performed, wells drilled, or fuel oil furnished at Pearl Harbor.

The Sinclair leases in Teapot Dome were executed in much the same atmosphere. The 1920 statute giving the Secretary responsibility for the reserves did not authorize leasing where there were outstanding claims or applications for leases. It is said that a million dollars were spent by Sinclair to buy up claims which were virtually worthless. Secretary Fall even went so far as to call out the Marines to evict rival claimants for Sinclair's benefit.

In the lease executed with Sinclair's Mammoth Oil Company, the government royalty, instead of being payable in cash,

[345] For a reference to better days for Mr. Doheny, see Part 2. "The Petroleum Lands."

[346] For a definitive treatment of the scandal, see NOGGLE, TEAPOT DOME: OIL AND POLITICS IN THE 1920's (1963). WERNER AND STARR, TEAPOT DOME (1959) is interesting and readable. For contemporary accounts, see RAVAGE, THE STORY OF TEAPOT DOME (1924); ISE, THE UNITED STATES OIL POLICY 356-88 (1926). An interesting appraisal of the actual trials, sufficiency of evidence, etc., is Haglund, *The Naval Reserves,* 20 GEO. L. J. 293 (1932).

[347] See United States v. Belridge Oil Co., 13 F.2d 562 (9th Cir. 1926) *cert. den.* 273 U.S. 733 (1926) sustaining a drainage lease in Reserve No. 1.

[348] 273 U.S. 456 (1927).

could be paid in oil certificates which could be exchanged for oil, storage facilities, or cash. The strange storage-facilities agreement contemplated that the government would relinquish two-thirds of its oil royalty in order that the lessee might build tanks to store the other one-third of the government royalty. In Teapot, there was no evidence of the danger of drainage from private adjoining landowners. The reserve actually contained much less oil than had been anticipated, thwarting what was said to have been Sinclair's boast that he would make over $100 million on the deal. Sinclair was alleged to have paid Fall well over $300,000 for the leases.

The Teapot Dome lease was cancelled on the ground of a fraudulent conspiracy between Fall and Sinclair in *Mammoth Oil Co. v. United States,*[349] which effectively documents the case against Secretary Fall. Fall was later convicted of accepting a bribe from Doheny[350] although Doheny himself was acquitted of giving the bribe on much the same evidence. Sinclair was convicted only of contempt of the Senate for refusal to answer, among others, questions relating to the purchase of outstanding claims in the Teapot Dome Reserve.[351] Recent historians have been reluctant to consign Fall to the villainous role generally painted during the twenties. In a light most favorable to him, it must still be said that it is unlikely that his sudden wealth was from money loaned to him, as he so earnestly contended. He also displayed poor judgment in lying initially about the source of the loan. Whether he actually believed that the reserves were in danger of drainage and that the international situation necessitated immediate development are matters which perhaps can never be determined with any degree of accuracy.

The exclusive jurisdicition of the Secretary of the Navy over outstanding uncancelled leases was confirmed by congressional action in 1928.[352] Teapot was sealed in 1927 and since then has returned to the government only nominal grazing fees.[353] In 1956[354] there was a general revision of the statutes relating to the reserves. The Secretary of the Navy is given discretionary power to "explore, prospect, conserve, develop, use and operate" the reserves. In 1962 portions of the naval oil shale reserve in Rifle, Colorado, were authorized to be leased for research under the supervision of the Interior Department.[355] The Secretary's powers may be performed directly or through leases or contracts. In Reserve No. 1, the Secretary is authorized to enter into cooperative or unit plans involving land owned by the government and privately owned land which is within the reserve or within the same geologic structure. Reserve No. 2 has been leased for years because of drainage problems, the leases being administered by the Secretary of the Navy under rules and regulations promulgated by the Secretary of the Interior.[356]

Whether the reserves should be turned over to commercial exploitation by private oil companies has been considered often

[349] 275 U.S. 13 (1927).

[350] United States v. Fall, 49 F.2d 506 (D.C. App. 1931) *cert. den.* 283 U.S. 867 (1931).

[351] Sinclair v. United States, 279 U.S. 263 (1929). Other litigation involved Attorney General Harry M. Daugherty (McGrain v. Daugherty, 273 U.S. 135 [1927]) and H. M. Blackmer who will go down in history as contributing an interesting point of Conflict of Laws in Blackmer v. United States, 284 U.S. 421 (1932). There was also litigation with Standard Oil in connection with school lands in a portion of Reserve No. 1. West v. Standard Oil Co., 278 U.S. 200 (1929); Standard Oil Co. v. United States, 107 F.2d 402 (9th Cir. 1940) *cert. den.* 309 U.S. 673 (1940).

[352] 45 STAT. 148 (1928).

[353] "Oil: Footnote to a Scandal," 53 NEWSWEEK 62 (Feb. 2, 1959) points out that in 1958 the revenue from grazing leases was $758.

[354] The present statutes are found in 10 U.S.C. § 7421 (b) et seq. (1964).

[355] 10 U.S.C. § 7438 (1964).

[356] 43 C.F.R. § § 3120.2-3120.3-2 (1967).

since 1945. After spending $52 million exploring and developing Reserve No. 4 in Alaska, the Secretary of the Navy was asked in 1954 whether the time had come to turn the reserves over to private companies. His reply: "The policy is the same . . . the best reservoir for oil is in the ground."[357] Although the four reserves are popularly said to hold nearly a billion barrels of oil worth nearly $2½ billion, current income to the Federal government a few years ago did not exceed $15 million annually.[358] The very mention of Teapot Dome has made politicians wince for the last 35 years. In 1959, President Eisenhower courageously suggested that the reserves were an anachronism and recommended continuing study of the advisability of their disposal.[359] He felt that they were no longer a significant defense measure since a worldwide petroleum industry must be relied upon in both peace and war to provide our requirements. One might add, they may be even less important in a nuclear age.[360]

The Closing and Reopening of the Public Domain to Oil and Gas Leasing. The 1920 Leasing Act was generally regarded as compromise legislation as far as the opposing forces of conservation and exploitation were concerned. At the time, some may have believed that the production of oil might diminish in the future, although the over-production in the first 20 years of the century furnished no support for this position.[361] As might have been predicted, over-production, depletion, and wasteful mining practices in the 1920's caused serious problems.[362] The ominous possibility of an oil shortage eventually occurring led President Hoover to inaugurate a new and drastic policy on oil conservation. An understandable desire to disassociate his party from Teapot was undoubtedly a secondary consideration. Eight days after he took office, the President announced that there would be "no leases or disposal of government oil lands, no matter what category they may be in; . . . except those which may be made mandatory by Congress. . . . In other words there will be complete conservation of government oil in this administration."[363] The next day Secretary of the Interior Wilbur requested the Commissioner of the Land Office to instruct all local offices to receive no further applications and to reject all those which were pending. It is estimated that 20,000 were pending on March 12, 1929. Moreover, the government inaugurated a concerted effort to cancel outstanding inactive permits. Between 1929 and 1932 approximately 16,600 outstanding prospecting permits were cancelled for failure to comply with the provisions of the Leasing Act relating to the commencement of drilling.[364]

The issues were clearly joined: Did the Secretary of the Interior or the President have discretion under the Leasing Act to refuse to issue permits on a wholesale basis because of the over-production of oil? To what extent, if at all, did the Mineral Leasing Act affect the President's withdrawal powers under the Pickett Act of 1910? Did the order of the Secretary actually constitute a withdrawal of the oil and gas reserves?

A mandamus case was soon instituted to determine the validity of a refusal to grant a permit to an otherwise qualified applicant whose application had been filed after the deadline. The questions raised above

[357] "Oil—Round 2," 130 NEW REPUBLIC 4 (April 5, 1954).

[358] See note 353, *supra*.

[359] 105 CONG. REC. 751, 759 (1959).

[360] See ENGLER, THE POLITICS OF OIL: A STUDY OF PRIVATE POWER AND DEMOCRATIC DIRECTIONS 83-86 (1961).

[361] See Part 2, n. 230 and text, n. 303 and text.

[362] See CONSERVATION OF OIL AND GAS: A LEGAL HISTORY 1948 (Murphy ed. 1949).

[363] Quoted in NOGGLE, TEAPOT DOME: OIL AND POLITICS IN THE 1920's 209 (1963).

[364] See note 362, *supra*, at 603.

were not answered in a very satisfactory way. The District of Columbia Court of Appeals reversed the lower court which granted the relief sought. The majority opinion seemed to feel that the Secretary's order did in fact constitute a withdrawal and that the Leasing Act in no way limited the discretion which the Secretary had under the Pickett Act. The court argued that the Leasing Act was no more mandatory than the 1872 Mining Law in this respect and that withdrawals under the latter statute had, of course, been susained.[365] On certiorari to the Supreme Court,[366] Mr. Justice McReynolds, affirming the decision, placed the case more on the ground that Section 13 of the Leasing Act could reasonably be interpreted to give the Secretary discretion in issuing permits. The court did, however, feel constrained to add that this interpretation was entirely consistent with the Secretary's "general powers over the public lands as guardian of the people" and also the fact that he did have the right to withdraw public lands from private appropriation under the *Midwest* decision.[367]

The public domain was reopened again to oil leases on April 4, 1932, but prospecting permits were issued subject to certain conservation restrictions relating to unitization and prorationing. Although the system of prospecting permits was abolished in 1935, it has been held that the Secretary has similar discretion in issuing leases.[368]

The Conflict Between Two Regimes: Location and Leasing

It was inevitable that the two systems—location and leasing—would eventually conflict. That the collision was postponed until the early 1950's is in itself remarkable. The story behind this is at once romantic and highly legalistic. The first adjective is used to describe the uranium boom. The last is meant to convey a kaleidoscopic picture of legislation which is so boring that even lawyers shudder when perchance they encounter almost any volume of the proceedings of the Rocky Mountain Mineral Law Institute. No attempt will be made here to wallow in the implications of either term. But, like it or not, "multiple surface use" and "multiple mineral development" are as much a part of the modern law of mining as were "extralateral" and "interlimital" in a better day.

A dubious legacy of World War II was the atomic bomb, which, apart from what one may think about the morality of its use, was something of a windfall for the public miner. As we have intimated, there were certain secondary benefits to the legal profession. The demand for fissionable source materials after the war and the urgency of a government monopoly in them prompted the enactment of the Atomic Energy Act of 1946 which, in sweeping terms, reserved all such ores in public domain land to the United States and required that they also be reserved in any mineral patent.[369] How then could an honest miner make a location based upon the discovery of uranium ore—much less obtain a patent which would be of any value? The question was never answered although one writer reports an unpublished departmental decision holding that the reservation invalidated any mining location based solely upon a discovery of uranium.[370] There was also some indication that a patentee whose location was based on nonfissionable materials could remove the fissionable materials de-

[365] Wilbur v. United States *ex rel.* Barton, 46 F.2d 217 (D.C. App. 1930).

[366] United States *ex rel.* McLennan v. Wilbur, 283 U.S. 414 (1931).

[367] United States v. Midwest Oil Co., 236 U.S. 459 (1915) discussed in Part 2, n. 271 and text.

[368] United States *ex rel.* Jordan v. Ickes, 142 F.2d 152 (D.C. App. 1944).

[369] 60 STAT. 755, 760 (1946).

[370] Note, 4 UTAH L. REV. 239, 251, n. 122 (1954).

spite the reservation in the Atomic Energy Act.[371] This prompted claim jumpers, who based their locations on other materials, to locate on top of uranium claims. The Atomic Energy Act of 1954 eliminated the troublesome reservation and retroactively validated all prior locations.[372]

Uranium ores discovered in the Colorado Plateau area were generally found in a type of sedimentary deposit which was also potentially valuable for oil and gas. And, one estimate was that as much as 75 percent of the available uranium lands were already under Federal oil and gas leases.[373]

The conflict between location and leasing came about because the Mineral Leasing Act, which made certain nonmetalliferous minerals exclusively leasable, made no provision for disposing of other minerals which might be discovered in leased land. On the other side of the coin, there was no attempt to amend the mining laws so as to provide that mining patents must contain reservations of the various Leasing Act minerals. A departmental decision in 1924 ruled that the issuance of a prospecting permit precluded, during the life of the permit, any entry under the general mining laws.[374] Although the decision may seem doubtful in retrospect, it was soon expanded in other departmental decisions to bar entries on any land classified as valuable for Leasing Act minerals or on any land subject to a lease or an allowable application for a noncompetitive oil and gas lease.[375] On the other hand, a locator who had made his discovery prior to the issuance of an oil and gas permit or lease would, of course, have priority.[376] Actually, the lease applicant had more difficulty discovering prior conflicting claims than did the locator.[377]

The uranium boom, which reached its height in 1954, was not unlike the California gold rush except that the average prospector was generally not quite as undernourished. One exception, however, was Charles A. Steen, a penniless geologist, who after unbelievable disillusionment, staked out a claim on a high sandstone ridge southeast of Moab, Utah, which the Atomic Energy Commission had declared to be barren of possibilities. Cer-

[371] See Bloomenthal, *Multiple Mineral Development on the Public Domain,* 9 WYO. L. J. 139, 142 (1954).

[372] 42 U.S.C. § 2098 (c) (1964). It is not to be assumed that there was general agreement on the advisability of repealing the reservation. See 130 NEW REPUBLIC 16 (May 17, 1954) ("... why in heaven's name should we give away and then buy back what is already ours?").

[373] Waldeck, *Uranium Mining Claims Staked on Prior Federal Oil and Gas Leaseholds,* 30 DICTA 56, n. 12 (1953).

[374] Joseph E. McClory, 50 I.D. 623 (1924). McClory claimed to have discovered a placer gold deposit in 1921 while drilling (presumably with no authority) a test well for oil and gas. It was discovered that 11 months before, one Sackett had obtained an oil and gas prospecting permit under the Leasing Act, which was in force at the time McClory's location was made. McClory applied for a placer patent, stating that he would agree to a reservation in the patent of all Leasing Act minerals. The Assistant Secretary of the Interior felt that the Leasing Act had the effect of "segregating" such lands and thus withdrawing them from location. This was based on a construction of the Leasing Act that the permit creates an inchoate right which, upon discovery of oil and gas, would absolutely entitle the permittee to a lease. "Hence, it is necessary to treat the land embraced in a prospecting permit as if embraced in an oil and gas lease . . ." The Department acknowledged that the permittee did not have the exclusive right to the use of the surface, however, since under the Leasing Act his rights were expressly subject to the provisions of the stock-raising homestead law. Moreover, it was felt that there could be no reservation of the Leasing Act minerals because the mining law authorized no reservations of this type.

[375] Applicability of the Mining Laws to Lands Known to Contain Any of the Minerals Named in the Leasing Acts of Oct. 2, 1917, and Feb. 25, 1920, 50 I.D. 650 (1924). See also Clear Gravel Enterprises, Inc., 64 I.D. 210 (1957); Jebson v. Spencer, 61 I.D. 161, 164 (1953); Monolith Portland Cement Co., 61 I.D. 42 (1952); United States v. United States Borax Co., 58 I.D. 426 (1943); Dredge Corporation, 64 I.D. 368 (1957).

tainly his discovery was one of the major uranium strikes in the United States and worth, according to contemporary reports, around $60 million.[378] Another, Fred Schwartzwalder, a school janitor and by all accounts not impoverished, had for years engaged in prospecting as a hobby. He found one of the few vein deposits containing high-grade uranium ore near Golden, Colorado.[379] Another, Vernon J. Pick, an electric motor repairman who went out of business in Minnesota when his plant burned down, made a discovery near Razor, Utah, which was eventually sold to the Odlum interests for a trifling $9 million.[380] And still another—the Happy Jack mine found it could not mine the copper which prompted the original location because there was too much uranium in it. This unmitigated blessing netted the discoverers $30 million, it was said.[381]

Reports like these were enough to induce hordes of amateur prospectors[382] to mortgage their homes to buy Geiger counters. The get-rich syndrome appealed to the generation of the fifties as it had to the "poor but honest" miner in 1849. However, few profited as did those mentioned above. Some small operators, claiming that they were being squeezed out by the "big boys," set up the Uranium Miners' Protective Association, a historical hangover from the mining camps of the 1850's.[383] Their difficulty stemmed from the fact that skyrocketing costs of mining and prospecting meant that only a real bonanza would pay off. Uranium companies with quaint Indian names (and even "quainter" financial structures) sprang up overnight, and queues of $20-a-week stenographers filled the streets in front of local stock exchanges to buy stock as low as 1 cent per share. One day during the summer of 1954 over 7 million uranium shares were traded on the Salt Lake Stock Exchange. Timco went up 6,900 percent above its initial offering price.[384] No one seemed to care whether uranium stock was purely speculative. And speculative it was for, even with a strike, it was impossible to tell the extent of the uranium ore in a particular cache. By late 1955 some of the magazines were beginning to talk about the "uranium bust"[385] in a way that was

[376] Jebson v. Spencer, 61 I.D. 161 (1953) (prior permit had expired at the time of location). If the location is not valid at the time of the lease, the lease is good. See, *e.g.*, Webster v. Knop, 6 Utah 2d 273, 312 P.2d 557 (1954); Norris v. United Mineral Products Co., 61 Wyo. 386, 158 P.2d 679, 683 (1945).

[377] The mining locator could without too much difficulty check the records in the Bureau of Land Management to determine whether oil and gas leases or applications had been issued or filed or whether the land was reported valuable for leasing minerals. A lessee or applicant for a mining lease had more difficulty in ferreting out dormant mining claims. It is possible to find location notices in the county recorder's office but it is extremely difficult. The Bureau of Land Management, of course, keeps no records of unpatented mining claims. Even if the mining location is discovered from the records in the county office, there would be no way of determining whether it was valid, i.e., whether the location notice was posted, whether the claim was monumented, whether there had been an actual discovery, etc. See 1 AMERICAN LAW OF MINING § 1.35 (Martz ed. 1960).

[378] See 28 BUSINESS WEEK 28-30 (August, 1953); 62 TIME 60 (August 3, 1953); 43 NEWSWEEK 100-105 (April 19, 1954).

[379] 64 TIME 31 (Dec. 6, 1954).

[380] 64 TIME 76 (Sept. 6, 1964).

[381] 66 TIME 94 (Dec. 5, 1955).

[382] Lang, *The Coming Thing*, 29 NEW YORKER 92 (March 21, 1953).

[383] 43 NEWSWEEK 27 (March 22, 1954).

[384] 44 NEWSWEEK 67-70 (Dec. 20, 1954): "Prospectors and promoters descended in a crescendo of newspaper, magazine, radio, and television ads touting uranium stocks which promised fortunes for pennies. Back rooms were transferred into brokerage offices. Local merchants caught the fever. They gave away uranium stock as a sales come-on. Hamburgers were called uranium burgers, ice cream sundaes, uranium sundaes. And, of course, millionaires became uraniumaires."

reminiscent of the miners who had gone out to Colorado in 1859 with "Pike's Peak or Bust" signs on their wagons only to return within a few months with the signs changed to "Busted, by God!" By 1957 it was said that the Atomic Energy Commission was announcing that it had enough.[386] Although these rumors were not true, production did drop off during the sixties, but it is refreshing to sense a note of optimism about uranium in current writing. James K. Groves, a Colorado lawyer who has been in the thick of things since the beginning, recently closed a comment with a refrain heard countless times in the history of American mining: "We ain't seen nothin' yet!" [387] Especially interesting are his statistics—unofficial, of course:

> Since that time [1947] and until June 30, 1966, there has been discovered in the United States, mined, milled and sold to the AEC, 145,379 tons of uranium oxide for an aggregate price of $2,546,126,000. Attention is directed to the difference between tons of uranium oxide, commonly called "yellow cake," and tons of ore. On an average one finds four to five pounds of uranium oxide in a ton of ore. I have been speaking of tons of uranium oxide. The price of $2,546,126,000 paid for uranium oxide is only 6¼ percent of the total sum of $40,772,502,784 thus far appropriated by Congress for the use of the Atomic Energy Commission. Of this uranium oxide, 141,679 tons came from privately owned mining claims and the remaining 3,682 tons came from lands leased by the AEC to private lessees.
>
> As high as 104,000 tons of contained uranium oxide were discovered in one year (1956). At the peak of production in 1960 twenty-five privately owned uranium mills in nine western states were processing 22,000 tons of ore per day. It is estimated that until now there have been 75 million feet of exploratory and development drilling, estimated to have cost $150 million. In order that it might explore for uranium, 982 square miles of public lands were withdrawn at the request of the Atomic Energy Commission.[388]

During the early period of the uranium boom the Atomic Energy Commission conducted no mining operations and apparently only one milling operation. It relied upon private industry[389] for exploration and development of uranium and restricted its activities to purchasing uranium ores and concentrates. Bonuses to stimulate exploration were awarded.

Stop-Gap Legislation. The conflict between the location and leasing systems was the subject of congressional relief legislation in what was popularly referred to in the trade by its chapter number in the statutes, Public Law 250.[390] The basic provisions of the act met with the approval of the mining industry as well as the Interior Department and the Atomic Energy Commission. Although it was intended primarily to afford relief to uranium locators on segregated land, the statute provided a procedure for validating "any mining claim" located between July 31, 1939, and January 1, 1953, if at the time of location the land was included in a permit or lease, or application or offer therefor, issued under the Leasing Act of 1920, or was known to be valuable for minerals subject to disposition under the Leasing Act. The first date was selected arbitrarily as the approximate time when vanadium development for defense purposes began on the Colorado Plateau.[391] The origin of the January 1, 1953, date is not so clear. The original bill in the House used the date on which it was first introduced, March 20, 1953. This was changed with-

[385] 81 AMERICAN MERCURY 34 (September 1955).

[386] 42 LIFE 23 (Feb. 18, 1957).

[387] Groves, *Uranium Revisited*, 13 ROCKY MT. MIN. L. INST. 87, 114 (1967). See also Lewis and Rooker, *Domestic Uranium Procurement—History and Problems*, LAND AND WATER REVIEW 449 (1966).

[388] *Id.* at pp. 87-88. See also ANNUAL REPORT, ATOMIC ENERGY COMMISSION 1967 23-28 (1968).

[389] An interesting pictorial coverage of the mining and milling processes will be found in 42 LIFE 23 (Feb. 18, 1957).

[390] URANIUM RELIEF ACT, 67 STAT. 539 (1953), 30 U.S.C. § § 501-505 (1964).

[391] See UNITED STATES CODE CONG. AND ADMIN. NEWS, 83d Cong., 1st Sess. 2347 (1953).

out comment to January 1 in an amendment offered by Representative Dawson of Utah.[392] The conference committee which later approved the House version did not comment on the change.

Under the act, owners of mining claims were required within 120 days after its passage to post an amended notice of location on the claim and to record this notice in the office where the certificate of location was on file. The notice was required to state that it was filed for the purpose of obtaining the benefits of Public Law 250. Any mining claim so validated was subject, however, to a reservation of Leasing Act minerals and to a right of the Federal government or its lessees to use so much of the surface or subsurface as might be necessary for prospecting or mining of such minerals.

The law failed to provide for future locations on segregated land, one of its principal defects. It should be noted that a validated location in no way affected the validity of an oil and gas lease or application, regardless of when the latter was issued or filed.

Even before the enactment of Public Law 250, the Atomic Energy Commission had actively encouraged uranium prospecting and had also issued some uranium leases on public lands. Formal regulations were not announced until February 10, 1954.[393] These provided the procedure for obtaining Circular 7 uranium leases. This program, it was hoped, would solve some of the problems created by the conflict with the Leasing Act. The new leasing system clumsily combined elements of both the location and leasing laws and ultimately proved to be burdensome to the Atomic Energy Commission as well as the uranium industry.[394] The system was studied by an interindustry committee in cooperation with the Interior Department and the Atomic Energy Commission. The result was Public Law 585, discussed below. Few leases were actually issued, and many of these were converted into mining claims under Public Law 585. In 1954, Circular 7 leasing was terminated.[395]

The Multiple Mineral Development Act of 1954—Public Law 585.[396] This statute reflects the contemporary policy of the Federal government to foster a system of multiple use for Federal mining lands. Like Public Law 250, it established a complicated validation procedure which has largely academic significance today. The more lasting features involved a comprehensive statement for the resolution of problems of multiple use and the so-called "section 7 proceedings" which have the effect of barring an unpatented mining locator from asserting rights to the Leasing Act minerals.

The validation or priority provisions[397] reaffirmed the procedure of Public Law 250 which required that locations on segregated land prior to January 1, 1953, be "relocated" within the 120-day period. Claims which were invalidated through failure to take the prescribed steps could not be revived under the new act. Vulnerable locations made between January 1, 1953, and February 10, 1954 (the effective date of the Circular 7 leasing regulations), could be perfected by taking the necessary validating steps within 120 days from August 13, 1954, the effective date of Public Law 585. However, mining claims located between February 10, 1954, and August 13, 1954, were void because of the hiatus between the cutoff date and the effective date of the act. However, if the locator had applied for a Circular 7 lease during this

[392] 99 CONG. REC. 9968-69 (1953).

[393] 19 FED. REG. 764 (1954).

[394] Note, 24 GEO. WASH. L. REV. 319, 330 (1956).

[395] 19 FED. REG. 7365 (1954).

[396] MULTIPLE MINERAL DEVELOPMENT ACT, 68 STAT. 708 (1954), 30 U.S.C. § § 521-31 (1964).

[397] See 1 AMERICAN LAW OF MINING § 1.40 (Martz ed. 1960).

period, he could convert it into a mining location. All locations made after August 13, 1954, on either segregated or unsegregated land are valid, but all such locations are expressly subject to a reservation of Leasing Act minerals. Only mining patents issued after the segregation are required to contain such a reservation, so that the locator will be more likely to go to patent if at the time there are no outstanding leases or applications.

Before Public Law 585, the oil and gas lessee had considerable difficulty determining whether there were outstanding dormant mining claims which might cloud his title. Since the government does not warrant its title to leased property, the lessee has the burden of making this determination. It is possible that he might have the right to initiate a private contest proceeding but that would require some knowledge of the locators whose claims are in question. The new act provided an in rem procedure—Section 7 proceedings—which title examiners may on occasion have to rely upon. A brief statement of the procedure contemplated by the act will suffice for present purposes.[398] The lessee must first file in the proper county office where the land is located a notice of the fact that a lease has been issued. After 90 days the lessee may file with the Bureau of Land Management a request for publication of the notice. This must be accompanied by a certified copy of the recorded notice, an affidavit that an investigation has been made of persons in possession, and a certificate from an abstracter or attorney based upon an investigation of county records. Names and addresses of persons in possession or who claim an interest under unpatented mining claims are required to be divulged. Anyone asserting a right to Leasing Act minerals must file with the land office, within 150 days from the first publication, a verified statement setting forth information about his claim. Copies of the published notice must be served personally or by registered mail on persons in possession or listed in the abstracter's certificate. A failure to file the verified statement within the 150-day period raises a conclusive presumption of waiver of any claim to Leasing Act minerals. Where a statement is filed, an administrative hearing is held to determine the validity of the mining locator's right to Leasing Act minerals. These statutory provisions are, of course, supplemented by departmental regulations.[399] Questions of the constitutionality of the published notice provisions have not as yet been considered by the courts.[400]

Multiple Use. The concept of multiple concurrent uses of Federal public land is not a new concept in the mineral context. It will be remembered that as early as 1907 President Theodore Roosevelt recommended that in the case of the mineral fuels legislation should be enacted to provide for "title to and development of the surface land as separate and distinct from the right to the underlying mineral fuels . . ."[401] After his administration, several Federal statutes expressly adopted his suggestion. A series of statutes between 1909 and 1912 permitted nonmineral entries on coal lands and authorized the issuance of limited patents.[402] In 1912, surface entries on oil and gas land in Utah were permitted.[403] This was extended in 1914 to other states.[404] The Stockraising Homestead Act in 1916 authorized prospecting for and mining of minerals re-

[398] See TRELEASE, BLOOMENTHAL AND GERAUD, CASES ON NATURAL RESOURCES 713-14 (1965); 1 AMERICAN LAW OF MINING § 1.42 (Martz ed. 1960).

[399] 43 C.F.R. § § 3542.1-3545 (1967).

[400] See 1 AMERICAN LAW OF MINING 116-20 (Martz ed. 1960).

[401] See Part 2, n. 203 and text.

[402] See Part 2, n. 215, 216, 300.

[403] See Part 2, n. 301.

[404] See Part 2, n. 302.

served to the Federal government.[405] The Taylor Grazing Act[406] in 1934 expressly provided that mining and prospecting might continue in grazing districts organized under the act. Although other examples in the fifties exist, these will be considered below. One significant contribution of Public Law 585 was the multiple-mineral development provisions which attempted to reconcile conflicts which may arise when land is used for Leasing Act operations as well as the mining of solid minerals.[407] It is interesting to compare these provisions with an early statute which also attempted to resolve similar problems.[408]

The sixth section of the act opens with the statement that each kind of mining shall be conducted "so far as reasonably practicable" in a manner compatible with the multiple-use concept. Two standards of conduct are adopted: one dealing with damage to minerals, the other with damage to existing improvements. As for the first, liability of a locator may arise even though in fact there is no multiple use, *i.e.,* no oil and gas lease or permit has been issued. The converse is also true, of course. Each must act "so far as reasonably practicable" in a manner which will avoid damage to the minerals of the other.

A stricter standard of conduct is set up with reference to existing improvements on the land. The operations of each are required to be conducted so as not to endanger or "materially" interfere with existing surface or underground improvements. Where damage to existing improvements cannot reasonably be avoided, the courts are authorized to resolve the conflict by providing for compensation for the injured party. In order to award fair compensation, the court must first find that the injury or damage which would result from denying the particular use outweighs the injury or damage to the existing improvements. This would seem to be essentially a "balancing-of-the-interests" technique. In lieu of present compensation, the court may authorize security. The statute also sets up a system whereby the operators may be required to exchange information relating to their respective operations.

Although the standards of liability are very broad, they do not seem to be more illusive than the rules of negligence in tort law. It is regrettable that there are no judicial decisions construing the act.

Action and Reaction

Since 1955, Congress has enacted some important legislation affecting mining on the public lands in addition to the multiple-mineral development statutes discussed in the previous section. Much of this legislation was provoked by an honest feeling that a great many unpatented mining claims were being used, to the financial detriment of the United States, for purposes quite unrelated to mining and that valuable surface materials were being lost because of the exclusive right to the possession of the mining claim which miners have traditionally enjoyed. Moreover, during this period, the Interior Department has displayed commendable aggressiveness in attempting to correct violations of what might be called the "spirit" of the mining laws. It is something of an understatement to say that the latter crusade has produced at times an indignant reaction from the mining industry. The government-industry disputes cannot be the subject of this section, however, because for one thing much of the disagreement can be relegated to the category of

[405] 39 STAT. 862 (1916), 43 U.S.C. § § 291-301 (1964).
[406] 48 STAT. 1269 (1934), 43 U.S.C. § 315 (1964).
[407] 68 STAT. 708 (1954), 30 U.S.C. § 526 (1964).
[408] See Part 2, n. 216.

what laymen like to call "lawyer's law." Second, several areas of conflict have been rendered more or less obsolete by recent Supreme Court decisions. A few of the principal differences will, however, be noted briefly here.

A great deal of ink has been consumed in recent years defining what constitutes a discovery of valuable minerals under the Mining Law of 1872. To the industry, there was no greater heresy than the suggestion that there ought to be some reasonable relationship between the commercial value of the mineral (including nonmetallics) and the validity of a mining claim. Whatever may be said about the *stare decisis* aspect of the controversy, it must be noted that the Supreme Court has recently held, without dissent, that commercial marketability is indeed an aspect of "discovery."[409] Viewed in the light of conditions at the time of the enactment of the mining law in 1872, this is not without justification. Slightly irrelevant, perhaps, is the fact that in 1872 a miner was required to spend $100 annually on assessment work to prevent a claim from being relocated. Considering the fact that his average hourly wage in 1890 was 20 cents, a "prudent" miner would think twice before spending $100 on surface development if his mineral had no commercial value in the community.[410] The Supreme Court did not, of course, consider this type of evidence in construing the statute but preferred to place its decision on the ground that in fact there had been no departure from the traditional definition of "discovery" in recognizing the element of marketability.

Another source of disagreement has been the extent to which the Department of the Interior could cancel by administrative action oil and gas leases which had been erroneously issued in violation of applicable leasing regulations or laws. Although a great many problems remain in this area,[411] some were foreclosed by a Supreme Court decision in 1964 upholding the power of cancellation in connection with violations existing at the time of the issuance of the lease.[412]

Another latent problem has been the extent to which the Mining Law of 1872 should be modified to deal with 20th-century mining problems. A great many articles have appeared with suggestions which would either promote the objectives of the industry[413] or the government.[414] Strangely enough, it has even become fashionable[415] for the industry to suggest that in some respects the mining law is obsolete. To our knowledge, the mining people have not yet suggested that leasing is a preferable alternative. It is hoped that some of the observations in earlier parts of this discussion may be helpful in making this basic policy decision. Other studies which have been undertaken for the Public Land Law Review Commis-

[409] United States v. Coleman, 88 Sup. Ct. 1327 (1968).

[410] The observation is made in O'Callaghan, *The Mining Law and Multiple Use,* 7 NAT. RES. J. 242, 248 (1967).

[411] See TRELEASE, BLOOMENTHAL AND GERAUD, CASES ON NATURAL RESOURCES 654-55 (1965).

[412] Boesche v. Udall, 373 U.S. 472 (1963).

[413] For some of the more recent, see Hansen, *Why a Location System for Hard Minerals?* 13 ROCKY MT. MIN. L. INST. 1 (1967); Ladendorff, *Suggestions for Congressional Action Relating to the General Mining Law,* 11 ROCKY MT. MIN. L. INST. 441 (1966); Twitty, *Amendments to the Mining Laws,* 8 ARIZ. L. REV. 63 (1966). On Federal oil and gas leasing, see Christy, *The Future of the Mineral Leasing Act — Suggestions for Consideration in Amendments to the Mineral Leasing Act of February 25, 1920,* 11 ROCKY MT. MIN. L. INST. 369 (1966).

[414] Pearl, *Projected Impact of Pending Proposals to Review the Mining Laws,* 9 ROCKY MT. MIN. L. INST. 1 (1964).

[415] The term is borrowed from Sherwood and Greer, *Mining Law in a Nuclear Age: The Wyoming Example,* 3 LAND AND WATER L. REV. 1, 3 (1968).

sion will presumably supply the necessary empirical data on which to determine the advisability of changes in the location law.

In the area of the administrative procedures of the Interior Department and particularly the Bureau of Land Management, there has also been disagreement between the government people and the industry. It is optimistic to assume that this type of disagreement will ever be completely solved to the satisfaction of both sides. These are matters on which it is impossible to pass judgment here.

Surface Resources and Common Varieties. Congress enacted the Surface Resources Act in 1947 which authorized the Secretary of the Interior to remove and sell certain surface vegetative minerals from public lands if such disposal would be in the public interest and was not otherwise expressly forbidden by any special act.[416]

In 1955, in the so-called "Common Varieties Act,"[417] it amended the earlier statute to include mineral materials, such as "but not limited to" common varieties of "sand, stone, gravel, pumice, pumicite, cinders, and clay." The Secretary of Agriculture was given similar powers with respect to land under his jurisdiction. More important for present purposes, the amendment expressly provided that the above "common varieties" are not, after July 23, 1955, to be deemed valuable mineral deposits within the meaning of the location law. In 1962, deposits of petrified wood were also included. A matter of special significance is the statement that unpatented mining claims after July 23, 1955, cannot be used for purposes other than prospecting, mining, and processing. The amendment expressly permits locations based on valuable minerals which might be associated with the enumerated common varieties. Also, the term "common varieties" does not include deposits of the stated minerals which possess some "distinct and special value," *e.g.*, "block pumice" which is expressly excluded. Departmental regulations explain the distinct and special value criterion.[418] The Supreme Court has recently held that the common-varieties amendment has impliedly superseded the 1892 Building Stone Act to the extent that ordinary quartzite stone which in this case was found in immense quantities in the general area of a claim is no longer within the location laws.[419]

Although the 1955 statute was not applicable to prior perfected locations because under the 1872 mining law these locators had the "exclusive right of possession and enjoyment of all the surface" within the boundaries of their locations, the act did authorize an in rem proceeding under which prior unpatented mining claimants are required to assert their claims or forfeit any surface rights which might conflict with the government's right of removal. The proceeding is obviously patterned after the similar procedure in the Multiple Mineral Development Act, discussed in the previous section. The purpose of the provision is, of course, to enable the government to dispose of surface resources of immense value on dormant mining claims. The procedure is apparently used extensively although there has not been much litigation.[420]

Withdrawals. In recent years, there appears to be growing dissatisfaction in the mining industry with the Interior

[416] 61 STAT. 681 (1947).

[417] 67 STAT. 367 (1955), 30 U.S.C. § § 601-615 (1964).

[418] 43 C.F.R. § 3511.1 (1967).

[419] United States v. Coleman, 88 Sup. Ct. 1327 (1968). This result was predicted in 1 AMERICAN L. OF MIN. § 1.19 (Martz ed. 1960).

[420] See Converse v. Udall, 262 F. Supp. 583 (D. Ore. 1966) (apparently on appeal). See generally, Barry, *Determination of What Constitutes "Common Varieties,"* 12 ROCKY MT. MIN. L. INST. 225 (1967).

Department's extensive withdrawals of public lands. Withdrawals for wildlife refuges particularly have been considerable. Many withdrawals were under the independent power of the Executive and have the effect of removing the land from location or leasing. The congressional reaction to withdrawals for defense purposes led to legislation in 1958.[421] Reminiscent of the restrictions placed on Executive withdrawals for timber reservations during the Theodore Roosevelt administration, the statute provides (with certain exceptions) that no withdrawal from settlement, location, sale, or entry of more than 5,000 acres of the public lands for any one defense project shall be valid except by act of Congress. The last section of the act states that all previous and future withdrawals (except the naval, oil, oil shale, and coal reserves) for the use of the Defense Department shall be deemed to be subject to the condition that all minerals, including oil and gas, in such lands shall be under the jurisdiction of the Secretary of the Interior. Such minerals shall not be explored for or disposed of except under the applicable public land mining and mineral leasing laws. Exploitation for minerals will not be allowed, however, where the Secretary of Defense, after consulting with the Secretary of the Interior, determines that mineral development or exploration would be inconsistent with the military use of the lands withdrawn or reserved.

Shale Oil. In recent mining history, nothing has caused as much excitement in the oil industry as the commercial potential of the vast oil shale deposits in the Green River Formation in Utah, Colorado, and Wyoming. There seems to be little question at the present time that oil can be produced from the shale in the near future at a cost which will be competitive with the ordinary production of crude oil from liquid reservoirs.[422] Whether the known oil shale deposits owned by the Federal government should be turned over to private oil companies for exploitation is a matter which has generated considerable debate. Even if this question receives an affirmative answer, there is no agreement on the conditions which should be attached by the government or the benefits which should be accorded the industry for making an investment of this magnitude.

Since the estimated value of our oil shale deposits runs into trillions of dollars, it is not surprising that some very searching questions must be answered before policy decisions can be reached. The public has been relatively apathetic about oil shale. It is true that there have been charges that there is a scandal in the offing which "makes the Teapot Dome look like a tea party,"[423] but on the whole, there has been relatively little discussion of the problem in the newspapers and magazines.[424] Any comparison to Teapot is, of course, absurd because there has been no aura of secrecy surrounding the oil shale question, and the bitterest critics of the government's oil shale policy seem to be rather poorly informed on the history of the problem.

To enable him to reach an informed judgment on the exploitation of oil shale, Secretary of the Interior Udall appointed an advisory board of private citizens in 1964 to make recommendations. The board consisted of the president of Re-

[421] 72 STAT. 27 (1958), 43 U.S.C. § § 155-58 (1964).

[422] de Nevers, *Tar Sands and Oil Shales,* SCIENTIFIC AMERICAN, February 1966, p. 21; Kelly, *Oil Shale: 1964 or 1984,* WESTERN RESOURCES CONFERENCE 237 (1964).

[423] J. R. FREEMAN, *The World of Oil Shale,* THE TEXAS OBSERVER, Jan. 12, 1968, 1, 4 is the most extreme indictment in print. The author alleges that as a result of his crusade against oil shale leasing, he has been subjected to burglarizing of his files as well as gunshots at the rear of his automobile.

sources for the Future, Inc., a president of the Colorado School of Mines, two attorneys in private practice in different parts of the country, a Harvard University economist, and a foreign investment counselor from Arizona. Their "interim" report was cautious.[425] Although it was urged that the Federal oil shale policy should promote a competitive shale industry and encourage research in technology and the conservation problems which arise in connection with processing oil shale, still the board reached no consensus on the question of opening the Federal lands to private leasing. Individual members of the board presented their own views on the desirability of immediate leasing. Of these, the position of John Kenneth Galbraith, the Harvard University economist, has received the most attention.[426] Essentially he recommends no leasing until government-sponsored research has revealed what sort of return the government might reasonably expect from leasing. Most of the others favored some degree of leasing as well as private research agreements. In May 1967,[427] Secretary Udall issued rules relating to leasing and proposed regulations which implemented his five-point program to open up the federally owned oil shale, announced 4 months earlier. The program can be only briefly noted here, and what follows is a most over-simplified statement of what is being considered. After suggesting that title controversies be cleared as rapidly as possible, he advocated a program of private exchanges to promote the blocking up of known oil shale lands in private or Federal ownership. The objective is to consolidate in one form of ownership sufficiently large blocks to create an economic-sized unit. The Secretary also has proposed regulations for research and development contracts for a very small portion of the oil shale deposits, for joint Interior, AEC, and private in situ[428] experiments, and for accelerated research by the Interior Department in technology and conservation practices and health safeguards.

For the lawyer, the title controversies referred to above are of unusual interest.[429] It will be remembered that prior to 1920, oil shale locations could be made under the Placer Law of 1897. Because of a minor oil shale boom after World War II, perhaps as many as 150,000 shale locations were made on the Federal land presently involved. The 1897 Act permitted the locator to obtain a patent, and it has been estimated that as much as one-fourth of the Federal oil shale lands have passed into private ownership in this manner. When oil shale became exclusively leasable after the Mineral Leasing Act of 1920, a few—very few—leases were issued in the

[424] An interesting account is Duscha, *Bonanza in Colorado—Who Gets It?* ATLANTIC MONTHLY 82 (March 1966), and Welles, *Oil Shale: Hidden Scandal or Inflated Myth?*, HARPER'S (August 1968).

[425] OIL SHALE ADVISORY BOARD, INTERIM REPORT (1965).

[426] Reprinted in 2 LAND AND WATER L. REV. 51 (1967).

[427] 32 FED. REG. 7086 (1967), proposed to amend 43 C.F.R., Subpart 3170 (1967).

[428] *I.e.*, retorting the oil shale in place, a process which would eliminate the expense involved in transporting the shale to the retort where it decomposes into oil shale.

[429] The two best general articles are Note, 19 STAN. L. REV. 190 (1966) and Note, 51 MINN. L. REV. 1154 (1967). See also Dominick, *Oil Shale—The Need for a National Policy*, 2 LAND AND WATER L. REV. 61 (1967). For discussions of specific aspects of the oil shale question, see Anderson, *Acquiring Rights to Minerals Associated With or Contained in Oil Shale*, 13 ROCKY MT. MIN. L. INST. 233 (1967); Cameron, *Current Problems in Oil Shale Development*, 10 ROCKY MT. MIN. L. INST. 339 (1965); Delaney, *Water for Oil Shale Development*, 43 DENVER L. J. 72 (1966); Miller, *Impediments to Oil Shale Development*, 35 U. COLO. L. REV. 171 (1963); Reidy, *Do Unpatented Oil Shale Mining Claims Exist?* 43 DENVER L. J. 9 (1966); Note, 3 LAND AND WATER L. REV. 75 (1968) (discussing the "reserved water" doctrine and its application to oil shale development).

decade which followed. The Leasing Act did not, of course, affect perfected shale locations made prior to 1920. In 1930, President Hoover withdrew all the Federal oil shale land from leasing, although unpatented locations remained valid. The Executive withdrawal is still in effect, but the Secretary of the Interior has power to reopen the shale land if he chooses to do so. It is the dormant pre-1920 placer claims which presently cloud the title to the Federal land, although actually these claims are on a relatively small portion of the Federal shale land. Between 1929 and 1933, the government attempted to eliminate thousands of unpatented oil shale claims in contest proceedings or in applications for patents. It based its case largely on the fact that the annual assessment work on these claims had not been performed. It lost on this ground when the Supreme Court held that the failure to perform assessment work did not result in forfeiture of the claims but merely made them vulnerable to relocation by other mining locators.[430] But, since locations and relocations could not be made after 1920, these pre-1920 locations continued to exist without visible evidence of any actual development, and it has been difficult indeed for the government to determine what shale land is subject to these outstanding placer claims. The Department as late as 1961 admitted that the contests between 1930 and 1933 were not valid in view of the Supreme Court's decision in 1935, and for many years it issued patents to these placer claimants. In 1964, it took quite a different position and urged that in the administrative cases in the early thirties which were not appealed, the decisions enjoyed the usual finality accorded to judicial judgments.[431] Encouraged somewhat by language in the second Supreme Court opinion, the government urged that these claimants were subject to the rules of res judicata, estoppel and laches and that it could at least assert that these claims had in fact been abandoned. So far the government has not prevailed.[432] There is even some possibility that oil shale patents may be collaterally attacked.[433]

There have been suggestions that legislative action might be taken to obliterate these dormant placer claims. One avenue might be noted here because it has been discussed in some detail in the previous section, *i.e.*, the use of "Section 7" proceedings under Public Law 585.[434] This will have limited use.

The final story of the Federal oil shale land is in the future. Every indication is that it will be a colorful one.

Classification; The Public Land Law Review Commission. The process of classification of public lands has always been troublesome. Some notable steps have been made in this direction in recent years. In the Classification and Multiple Use Act of 1964,[435] Congress directed the Secretary of the Interior to review public lands under his jurisdiction with a view to determining what lands should be retained in public ownership and which land might be disposed of for community development and other purposes. The Secretary is also authorized to sell land for community development and growth under the Public Land Sale Act.[436] The Classification Act also expressly recognizes the principle that retained lands should be managed for multiple use, and the

[430] See Wilbur v. Krushnic, 280 U.S. 306 (1930) and Ickes v. Virginia-Colorado Dev. Corp., 295 U.S. 639 (1935).

[431] Union Oil Co., 71 I.D. 169 (1964).

[432] Oil Shale Corp. v. Udall, 261 F. Supp. 954 (D. Colo. 1966). It is not known whether this case is on appeal.

[433] See Lohr, *Conclusiveness of United States Oil Shale Placer Mining Claims,* 43 DENVER L. J. 24 (1966).

[434] See note 398, *supra,* and text.

[435] 78 STAT. 986 (1964), 43 U.S.C. § 1411 (1964).

[436] 78 STAT. 988 (1964), 43 U.S.C. § 1421 (1964).

production of minerals is specifically named as one such use. Regulations have been published. Although classification may have the effect of segregating land from mining, the regulations provide that this is not to occur "unless the nonmineral uses would be inconsistent with and of greater importance to the public interest than continued search for a deposit of valuable minerals."

The Public Land Law Review Commission is currently charged with the responsibility of making concrete recommendations to the Congress on the extent to which public lands should be retained and managed by the Federal government or disposed of in a way which will provide maximum advantages to the general public.[437] Similar commissions existed in 1879 and 1903.[438] It is expected that the present Commission will make some lasting recommendations.

The conflict between public and private interests in the Federal public lands creates problems of enormous scope.[439]

The New Conservation

For the Progressives of the Theodore Roosevelt era, mineral conservation quite understandably meant saving for a future generation, with little attention paid to current wasteful and uneconomic practices. The second and third decades of this century witnessed the effects of an under-regulated industry exploiting oil and gas resources in a manner unparalleled in the history of public land law. This was true despite the "closing" of the reserves between 1910 and 1920. The same situation prevailed in private production of oil and gas. Alarmed at wasteful practices, depletion and over-production, President Coolidge set up the Federal Oil Conservation Board in 1924 to work with the industry on conservation. Unimpressed with the accomplishments of the board (as a member, he was aware of its shortcomings), President Hoover, it will be remembered, announced a policy of complete conservation of public oil and gas during his administration. His program for government-industry cooperation was quite successful, and production was considerably decreased.[440]

Compared with the history of mineral conservation, the national forests have long been the subject of careful conservation techniques by the Forest Service of the Department of Agriculture. Due perhaps in part to favorable congressional appropriations, the Forest Service's record has been impressive. With the Taylor Grazing Act in 1934, the government began to take a close look at another of the natural resources of the West, the grazing lands, a resource which Theodore Roosevelt had wanted to classify as a "public utility" as early as 1905. In 1934, the condition of the grazing lands was a national scandal. Under the new act, the Department of the Interior was able to inaugurate what might be termed "the period of aggressive management." The Department had had an impossible assignment for nearly a century. Grossly understaffed, it was totally unable to handle the congressional profligacy of the 19th century. And, although Secretary Garfield's tenure during the Roosevelt administration was eminently successful, this was closely followed by the famous Ballinger-Pinchot controversy in which the Department was perhaps most unfairly dealt

[437] 78 STAT. 982 (1964), 43 U.S.C. § 1391 (1964). See generally Phipps, *The Public Land Law Review Commission—Identifying and Defining the Problems*, 2 LAND AND WATER L. REV. 251 (1967).

[438] REPORT OF THE PUBLIC LANDS COMMISSION, EXEC. DOC. NO. 46, 46th Cong., 2d Sess. (1880); SEN. DOC. NO. 188, 58th Cong., 2d Sess. (1904) and SEN. DOC. NO. 154, 58th Cong., 3d Sess. (1905).

[439] For a detailed study, see Bennett, *Public Land Policy: Reconciliation of Public Use and Private Development*, 11 ROCKY MT. MIN. L. INST. 311 (1966).

[440] Swain, *Federal Conservation Policy 1921-1933*, 76 U. OF CAL. PUB. IN HISTORY 53-72 (1963).

with by the dedicated Pinchot conservationists. If that was not enough, Secretary Lane's later hassle with Navy Secretary Daniels over the naval reserves did little to improve the Department's public image. The final blow came with Secretary Fall's involvement in Teapot Dome. It is fortunate that the office eventually came into the capable hands of Secretary Ray L. Wilbur in the Hoover administration. Since that time, Interior has earnestly functioned at a level of efficiency far beyond what its early history might have predicted.

As part of the period of aggressive management, the post-war years saw the introduction of the concepts of multiple-mineral development and multiple surface use as part of the conservation program for mineral land. The war against dormant and fraudulent mining claims and oil and gas leases which violated provisions of the Leasing Act was a major aspect of the program of the Bureau of Land Management.

There emerged in the fifties quite a different concept of conservation—the notion that man must, before it is too late, put aside areas of wilderness, even though this means an end to the traditional forms of exploitation which had "closed" the western frontier. This was hardly a new concept, however, for as Roderick Nash has recently recounted, the preservationists have a long and interesting role in the conservation movement in this country.[441] Their success in molding public opinion resulted in the enactment of the Wilderness Act in 1964,[442] atfer lengthy congressional hearings in which its advocates defended attacks from the mining industry as well as many professional conservationists in government circles. The act provides that national forest lands classified as "wilderness" under the act remain subject to the Federal mining and leasing laws until December 31, 1983. Any mining patent issued after passage of this law and subject to valid existing rights at the time of passage must, however, contain a reservation to the United States of title to the surface. After January 1, 1984, minerals in all wilderness lands are withdrawn from all forms of appropriation under the mining and leasing laws. Access to the forest wilderness areas is subject to reasonable regulation by the Secretary of Agriculture.[443] Wilderness areas within national parks, national wildlife refuges and game ranges are within the jurisdiction of the Department of the Interior.

It is ironic that the preservationists are now faced with a demand for mass public recreation which may eventually destroy the very things they have wanted to perpetuate. As Mr. Nash puts it: "Having made such remarkable gains in the public's estimation in the last century, wild country could well be loved out of existence in the next."[444]

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[441] NASH, WILDERNESS AND THE AMERICAN MIND (1967). A bibliography of wilderness literature appears at 237-46.

[442] 78 STAT. 890 (1964), 16 U.S.C. § 1131 (1964). The 1964 legislation established a wilderness preservation system of around 9.3 million acres. Committee hearings are currently being held on proposals to add additional land in New Jersey, Florida, Massachusetts, Michigan, Wisconsin, and Maine. DES MOINES REGISTER, June 17, 1968, p. 12.

[443] 36 C.F.R. § 251.82-251.84 (1968).

[444] NASH, *supra* note 441, at 235-36.

The wilderness concept is in fact dwarfed by the broader objectives of the "new conservation" program of President Johnson. It was earlier described by Secretary of the Interior Udall in *The Quiet Crisis.*[445] The program is something to which the mining community will eventually have to adjust.[446] The "new conservation" has never been more eloquently defined than in the President's message to Congress on February 8, 1965:[447]

> Our conservation must be not just the classic conservation of protection and development, but a creative conservation of restoration and innovation. Its concern is not with nature alone, but with the total relation between man and the world around him. Its object is not just man's welfare but the dignity of man's spirit.

[445] UDALL, THE QUIET CRISIS (1963). See also DOUGLAS, A WILDERNESS BILL OF RIGHTS, BRITANNICA BOOK OF THE YEAR, 1965.

[446] See Clyde, *Legal Problems Imposed by Requirements of Restoration and Beautification of Mining Properties,* 13 ROCKY MT. MIN. L. INST. 187 (1967).

[447] 111 CONG. REC. 2085 (1965).

Summary

American land policy from Independence to the end of the 19th century had four objectives inherited from the colonial period: (1) to produce revenue for the government; (2) to facilitate the settlement and growth of new communities; (3) to reward veterans of wars; and (4) to promote education, the establishment of eleemosynary institutions, and the construction of internal improvements by grants of land. Spokesmen for all four of these objectives were to clash over the relative importance of each and were to cause the adoption of measures that were inharmonious and incongruous with others.

The need to refund the heavy debts contracted during the Revolution which went unpaid under the Confederation, induced Thomas Jefferson, the agrarian radical, Alexander Hamilton, the fiscal conservative, and Albert Gallatin, who represented a midway position between the views of the two, to agree to pledge the income from land sales for the retirement of the debt. The public lands were to be sold and the proceeds "appropriated toward sinking or discharging the debts . . . and . . . applied solely to that use." This solemn pledge of August 4, 1790, and of April 1798 was to hold Congress to a revenue policy until the debt was retired. Land was to be sold in large tracts at competitive bidding on a wholesale basis and it was expected that the buyers would then retail it out to small farmers in the way that James Fenimore Cooper was retailing land on the New York frontier.

Agrarian followers of Jefferson disliked the emphasis upon revenue in the disposal of the public lands. They agreed with him that "the small landholders are the most precious part of a State" and that "vast grants" or large ownerships tending toward "monopolies" were wrong. They wished to give the common man easy access to the public land and the chance to acquire ownership out of the capital they accumulated from cultivating it. This involved permitting settlers to search out attractive locations, to improve them, and after a few years to preempt them at the minimum price. Frontier settlers wanted no speculators buying at a competitive sale and therefore they demanded the right of preemption and wanted the public land reserved for farm makers. Failing that, they wanted sales postponed as long as possible to give them time to accumulate the $200 for their quarter-section and to assure that settlers took up most of the land. At the same time they wanted no restrictions placed on the areas into which they might move and urged the speedy removal of the Indians from desirable areas and the rapid survey of the lands.

In addition to these advocates of a wide-open land system that would permit individuals to settle wherever they wished, there was another element of the population concerned with the business in land, timber, and minerals. No one has essayed a history of the land business but when one thinks of the number of speculators, land agents, landlookers, timber cruisers, dealers in land warrants, scrip, and tax titles, and lawyers who were absorbed in these frontier occupations, and of the fortunes that were made and lost in land specula-

tion, it is easy to see that the influence of these classes was large. Persons engaged in the land business wanted no restrictions placed in their way of profit, no regulations such as were suggested by the Commissioner of the Land Office at one time, no investigations of their activities. On the positive side they favored legislation that would attract immigration, provide internal improvements and encourage statehood, and they joined with pioneer settlers in booster activities that would stimulate a demand for land and a rise in its value.

The third objective of using the public lands to reward veterans of past wars was pursued generously by Congress. Even if they had served only a few days, veterans of all wars through that with Mexico were given warrants they could exchange for land, first in military tracts, later anywhere there was public land open to entry. True, the maximum grant of 160 acres, which was given to officers as well as men, was small in comparison with the more generous bounties officers had received in the colonial period, but in a more democratic age the old disparities between ranks seemed less desirable. The great majority of the warrants were sold at well below the government-minimum price for land, thereby reducing the cost of land for speculators and such settlers as acquired them.

Very early the public land states began to exhibit disenchantment with Federal ownership, administration, and determination of policy concerning the public lands. They recalled that they were admitted into the Union "on an equal footing with the original states, in all respects, whatever," and yet were denied ownership of the ungranted land within their boundaries, whereas Massachusetts and all others of the Original Thirteen had retained the ungranted lands within their boundaries. Furthermore, the new states had been required to make a compact that they would not tax the newly granted lands for 5 years after they were sold. To win the acceptance of such compacts the new states were offered one thirty-sixth of the public lands within their borders for schools and smaller grants for other purposes. No state was content with such a bargain. Some tried to induce the Federal government to cede its lands to them; others strove to gain larger donations and over the course of years Congress did become increasingly liberal. School donations were increased from one section in each township to two and finally to four, large grants were given for agricultural colleges, and, most important, for the construction of roads, canals, and railroads, the dredging and improvement of navigable rivers, and for irrigation. The states having found a way of gaining ownership of a portion of the public lands came forth with many proposals for internal improvements, some dubious to say the least. Most questionable was the donation of the swamplands to the states which were expected to drain them—something that strict constructionists thought the Federal government lacked the power to do.

Grants for public schools, for roads, canals, and railroads could be justified, said those who always searched for specific authorization in the Constitution for any action they might favor, on the ground that they would enhance the value of the remaining lands and thereby bring to the government as great a return as if no land had been given away. By giving one half the land in alternate sections for internal improvements and raising the price of the reserved sections to the double-minimum there would be no loss. Congress, having found a nearly perfect rationalization for grants it wished to make, was willing to vote huge grants to the transcontinental railroads in 1862-71.

Through the granting process Congress was experimenting with bounties, subsidies to worthy objects that could not be achieved, at least not at that time, without

Federal aid in the form of public lands. In voting these bounties it was slowly expanding its own vision of America's destiny and of the powers of the national government under the Constitution. It was the Federal government that built the National Road in Ohio, roughly Route 40 today, and made possible the Illinois and Michigan Canal, the predecessor of the Chicago Drainage Canal, and the most widely used Soo Canal. It was the Federal government that made possible early construction of the Union Pacific, the Northern Pacific, the Santa Fe, and the Southern Pacific Railroads. It was the Federal government that provided a source of funds for common schools in frontier communities and initiated moves for the establishment of the great state universities. These Federal land grants made necessary the creation of state and railroad land departments to sell these grants at the highest price obtainable if the purposes for .which they were given were to be achieved. In the 1850's, then, Congress was relaxing its own emphasis upon revenue, was issuing great quantities of military bounty warrants and scrip that sold for less than $1.25 an acre, under western pressure was graduating the price of land in proportion to the length of time it had been on the market and was moving toward a policy of free grants; at the same time the states and the railroads were attempting to extract from their grants the greatest possible return. The incongruity was apparent to few at the time.

Having pledged the income from the sale of public lands to the retirement of the war debt it was natural that the public lands should be placed under the charge of the Treasury Department (they remained there until 1849 when they were transferred to the newly established Department of the Interior, where western influences were to be much stronger). It was also natural for Congress to ask of the brilliant Hamilton a plan for the sale of the lands which was partly incorporated in the first important land act of the new government in 1796. But Congress early showed its intention of determining land policies. It had no great liking for Executive leadership, whether it came from the President, as during the Jackson administration or, at a later date, from vigorous and energetic administrators of the Land Office like John Wilson and William A. J. Sparks. Commissioners of the General Land Office who irked Congress did not last long.

Outstanding American statesmen who have had a share in shaping our land policies have held very diverse views. In addition to Hamilton, Jefferson, and Gallatin in the early period, we have Madison and Monroe expressing grave constitutional doubts as to the use of Federal power to develop internal improvements, whereas John Quincy Adams reverted to Hamilton's and Gallatin's broad latitudinarian concept of Federal powers. Jackson and Calhoun both advocated the transfer of the public lands to the states when the income from the public domain was no longer essential for the central government. Cession of the lands would remove one of the principal nationalizing forces which Calhoun so greatly feared, and would at the same time win for him a political following in the newer states. Henry Clay wanted to retain the $1.25-an-acre price and distribute the surplus income to the states on the basis of their population, a position that was liked in the older and more populous states. Thomas Hart Benton, friend of the St. Louis barons of the fur trade and of claimants to huge land grants, preferred to cheapen the price of land by graduating it in relation to the length of time it had been on the market.

In the middle period, new statesmen like Stephen A. Douglas argued that the Nation with its new acquisitions on the Pacific should be bound together by railroads which could only be built with great dona-

tions of land. Andrew Johnson, Horace Greeley, and George W. Julian favored abandoning the revenue policy and granting free homesteads to all who would go west to make farms. They were responsible for banning all speculative purchasing of land in the five southern public land states from 1866 to 1876.

What of earlier objectives of Federal land policy after the adoption of the Homestead Act? The revenue concept was not abandoned. Land already offered and great acreages to be put up at auction in the future were available for purchase in any amount at $1.25 an acre, or at less cost if depreciated bounty warrants and scrip were used. In the event that a homesteader preferred to take title after 6 months on his claim he could commute the 160-acre entry to a cash entry by paying $200. The Desert Land Act of 1877 offered settlers arid land in tracts as large as 640 acres if they would conduct water on it and pay $1.25 an acre. The Timber and Stone Act of 1878 provided for the sale of 160 acres of land for its timber or stone for $2.50 an acre. Actually, the government received far more from land sales and mineral leases after the initiation of free lands than it did before. True, the income from public lands constituted a very small percentage of the gross government revenue in contrast to the earlier years when it amounted to as much as 48 percent in one year. Revenue was no longer a major objective, though there were those like Carl Schurz who felt that a fair price in relation to value should be paid for forest land.

Veterans of the Civil War were not to be rewarded by military bounties, though there was a strong bloc which favored the revival of the bounty acts of 1847 and 1855. But since all persons, including veterans, were entitled to free homesteads if they would live upon them and develop them, the bonus of an extra quarter-section would only play into the hands of speculators, as the earlier bounty warrants had done. Veterans were given the right to homestead on 160 acres of double-minimum priced land within the primary area of railroad land grants and some were able to make something out of the soldier's additional homestead rights which came to be one of the most valuable forms of scrip and one of the most abused. Later, veterans were given preference in the selection of homesteads in reclamation projects.

Congress continued to make grants to states, with increasing liberality. Notwithstanding, the newer states after 1860 did not receive as large a proportion of their land as did Florida, Louisiana, Michigan, Wisconsin, or Arkansas which had been given their swamp and overflowed tracts by the Acts of 1849 and 1850. Furthermore, Congress was placing restrictions upon the price for which the land could be sold. In the case of the Omnibus States (Montana, North and South Dakota, Washington), the minimum price was $10 an acre. Thus while giving land directly to homesteaders the Federal government was requiring the states to withhold their place grants until they could sell at the minimum it established.

Equally difficult to reconcile with free lands were the grants to railroads. The colonization railroads advertised their lands extensively in Europe and in the older parts of the United States, and brought in many thousands of settlers to buy and develop their lands. At least one railroad recovered the full original cost of its construction from its land sales and some others did nearly as well.

To consider legislative proposals concerning the public lands, Congress first used special committees and then in 1805 the House set up a standing Committee on Public Lands and in 1816 the Senate did likewise. There seem to have been fairly close and cooperative arrangements between the General Land Office, which was

created in 1812, and the Senate and House Committees on Public Lands, though it must be said that Congress annoyed the land officials especially in the early period by continually asking for detailed statistics of lands surveyed, offered, and sold, or of collections. Essential as the information was in planning for legislation, assembling it as Congress asked, in detailed form by states and territories required that the too few clerks, already far behind in their regular work, be assigned to the task. The hope of catching up with the delivery of patents, acting upon contested entries, posting tract books and fulfilling other heavy record keeping obligations was thus further deferred. By its requests for reports Congress would blithely pile up obligations for the Land Office, but it was unresponsive when it came to voting appropriations for additional clerks and raising salaries to levels prevailing in other government agencies, so as to secure a more technically competent staff. It is tedious to read over the reports of the Commissioners of the General Land Office who for years placed as their first recommendation the need for expanding the staff and increasing salaries when there were so many other reforms that were badly needed. Yet the Commissioners were right, for better administration—and that meant abler personnel—was the first necessity.

Meantime the business of wholesale purchasing of public lands, subdividing them, laying out towns, and retailing lots and small farm tracts became one of the biggest businesses of the country and one on which many of its fortunes were founded. As population grew in the older areas and people swarmed to the new, the demand for land sent prices upward, revealing marvelous opportunities for profit by anticipating future land needs. Land speculation had been one of the early factors behind the establishment of the Colonies. Few of the founders from John Winthrop to George Washington had failed to accumulate land as an investment and few of them thought of a possible conflict of interest between their investments and the legislation or administrative practices they favored that made them possible. As the way was opened for the granting of land for canals, roads, and railroads few people saw anything wrong in favoring legislation that would enhance the value of their lands along the routes of proposed projects. Stephen A. Douglas, John Wentworth, Daniel Webster, and Samuel C. Pomeroy were just four of the members of Congress who supported legislation that promised them high returns on investments they had previously made. Those who had less capital and less political influence could anticipate the coming of settlers to their areas by buying an extra quarter-section, or at least by trying to control it through a claims association. People from high and low ranks indulged in land speculation. Not only did western settlers try to accumulate in proper and legal ways more land than they had the capital and physical energy to develop, but they were also ready to misuse the settlement laws and take advantage of their loopholes, of the dishonesty of local officers, and the cupidity of investigating agents. In some areas they were led to this type of conduct by the fact that the quantity of land they could legally obtain from the Federal government was not a large enough economic unit; in some instances they were bogus settlers acquiring land for large cattle companies or speculators.

The second of the early objectives was never discarded. Business interests in the newly developing western states were constantly trying to draw settlers to their communities and to prevent any action that might retard immigration, settlement, and development. Before 1902 many westerners had held that all public lands should be reserved for homesteaders and that none should be sold. In 1889 they had brought

about the end of unlimited sales and in 1891 they secured legislation to halt cash sales, though commutation and desert land sales were still bringing in funds to the Treasury. Now they proposed to divert practically all income from these sales into a revolving fund for the construction of dams and reservoirs to provide water for the irrigation of arid lands. Reclamation soon grew into a mighty giant bringing to the semi-arid states both a farm population and the possibility of industrial development and urban growth.

Retrospectively, critics may see that many blunders were made in legislating for the administration and disposal of the public lands. Too many laws were shaped largely in the hurly-burly of discussion on the floor of the Senate or the House with numerous amendments being added, deletions made, and words changed without careful attention to the effects of these alterations. When the differences between the versions of the two Houses were ironed out in conference and the measures reported back for final adoption, time was often short and they were too speedily approved. Hidden jokers, subtle changes in meaning, the removal of powers administrative officers needed to carry out their responsibilities effectively were not uncommon. The inflexible government price of $1.25, maintained until 1854, caused buyers to seek out only the best land. Combined with the rapid opening of new areas to purchase and settlement, the inflexible price served to scatter settlement widely, delay the coming of social institutions, and push the frontier of settlement far into the Indian country with friction and wars resulting.

Classification and appraisal of the public lands was out of the question before 1870 but thereafter some progress might have been made with more constructive leadership. Homesteading might better have been confined to areas with sufficient rainfall, but banned in the semi-arid lands west of the 102d meridian and heavily forested regions of the Upper Lakes States, the Rocky Mountains and the Pacific Coast. Settlement laws, including the Homestead, Timber Culture, and Desert Land Acts and other measures ostensibly adopted for settlers, such as the Timber and Stone Act and the Forest Lieu Act should, after an initial but short period of trial, have been amended or repealed, as all succeeding Commissioners recommended. The Preemption and the Timber Culture Acts were repealed in 1891 but Congress permitted the Timber and Stone Act to remain in operation, to the great and constant annoyance of the Commissioners. Registers, receivers, and surveyors general were responsible to the local and national political leadership which gave them their appointments, and too often if the local leaders were in the lumber business or in the livestock industry the conflicts of interest were commonly resolved in favor of the interests rather than the government. Establishment of great ownerships—partly corporate and partly individual—of timberlands, rangelands, and even farmlands were enabled, and at times there was cause for concern because the proportion of farms occupied by tenants was increasing rapidly.

Yet with all the poorly drafted legislation, the mediocre and sometimes corrupt land officials, the constant effort of settlers, monied speculators and great land companies to engross land for the unearned increment they might extract from it, the Federal land system seems to have worked surprisingly well, if we may judge by the results. Outside the cotton-growing South where the plantation system prevailed before 1860 and tenancy and sharecropping subsequently, suitable public land was being acquired by small owner operators and tenancy was less common. Disregarding the southern states, a total of 1,738,176 farms had been created in the public land states by 1880 and only in four states—California,

Oregon, Colorado, and Nevada—did the farms average over 160 acres. Of these farms 1,381,406, 80 percent of the total, were owner operated. This is good evidence that the railroad grants, the land given to endow the states, and even the speculative purchases were being divided into single family farms. Except in Illinois and Iowa, tenancy seems to have been largely the result of ownership passing from one generation to another. By 1900 the public land states, still excluding the cotton South, boasted 2,404,968 farms, 70 percent of which were owner operated. It was still possible to say, as had been even more true in 1880, that the public domain had been so disposed of as to increase the class of small landowners, as Jefferson had desired.

Before the close of the 19th century many thoughtful people became aware of the value and future significance of the natural resources still held by the Federal government and of the need for giving more attention to the methods of managing and disposing of them. This was reflected in the greater care given to the framing of new land legislation. Furthermore, although the surveyors general, registers and receivers of land offices were still a part of the patronage system as late as 1933, the emphasis upon civil service reform and the better salaries paid these employees assured a somewhat better type of official as is evidenced by the diminishing criticism of their activities. When scandals did occur they were the responsibility of men at the top, not in the lower echelons of office holders.

Another result of the greater appreciation of the value, uniqueness and diminishing amount of the public domain with its forests, wildlife, white-water streams and scenic spots, was that some people began to question whether private ownership was superior to public ownership. The rapid depletion of the standing forests in the Lake States gave rise to the fear that in a generation or less, at the then rate of cutting, supplies would become so depleted as to compel reliance on other countries. Scientific forest management as practiced abroad attracted attention. Conservation was advocated both by preservationists who wanted to lock up certain resources such as Yosemite and Yellowstone so as to prevent any exploitation of their timber, minerals, or water power and to retain these great works of nature in public ownership for future generations, and by advocates of scientific management and use of the forests, minerals, and water power. The concept of permanent reservations was difficult for many to accept. Had not America's greatness rested upon the license to exploit without government interference? Yet a number of national parks were set aside and the Act of 1891, authorizing the President to establish forest reserves on the public domain, made possible considerable progress in developing a conservation program before the end of the century.

Theodore Roosevelt brought to the conservation movement strong national leadership, a dramatic ability to interest the public, and an understanding of Presidential powers and how to use them to advance the ends he favored. Most of the western forests of today were set aside in his administration. It was Gifford Pinchot who constantly needled the President to withdraw lands for national forests, to protect the government's rights to rich coal deposits, and retain water power sites in public ownership. Roosevelt and Pinchot made a team unmatched in American history for what they preserved for future generations. Conservation became the fifth, and to many the overwhelming, objective of American land policy.

A sixth objective has become in the 20th century quite basic in determining land policy. Instead of considering the economic value of land in terms of its best use either as rangeland or for forests, for watershed

protection, recreation, preservation of wildlife, mining, industry or urban proliferation, the modern multiple-purpose objective takes all these factors into consideration and upon that broad base the future use of any particular tract may be determined.

Conservation had its advocates in all parts of the country but its support in the states in which there remained large amounts of public land was distinctly more tepid than elsewhere. Why, said West Coast lumbermen, were the public forests to be withheld from purchase and cutting when no such withholding had existed elsewhere? Why should the grazing lands be retained in Federal ownership and be managed by an agency quartered in Washington? Why should 86 percent of the entire acreage of Nevada, 66 percent of Utah, 64 percent of Idaho be retained in Federal ownership, kept off the local tax lists, the timber withheld from cutting, the rangelands denied to sheepmen or cattlemen who had no local property base, the power sites developed by public agencies and not subjected to local taxes? In the past the states had mismanaged and wastefully disposed of the Federal land which had been granted them, but in recent decades it can be argued that most of them were managing their landed property as well as the Federal government was. These western states came to think of the extensive Federal lands within their borders, reserved or withdrawn from entry, as retarding their development, slowing down their progress, and keeping them in thralldom to a remote government not capable of understanding their needs. Too often, they forgot that substantial portions of the returns from minerals, lumbering, grazing, and water power development on the public lands were either flowing into reclamation development or the building of access roads and other improvements in their section.

Finally, in appraising the American land system the question that should be asked is not whether East and West have received their proportionate share of the public domain, or the income from it, or whether the western states have been treated in an unequal and niggardly fashion in not being granted all the land within their boundaries. The questions are: (1) whether land-hungry settlers have been able to establish themselves permanently on suitable land with secure titles to farms of efficient size; (2) whether the minerals, forests, and grazing resources have been efficiently used without undue waste; and (3) whether the long-run interests of a growing Nation have been foreseen and provided for.

The public lands have come to have different levels of interest for society as it has become more mature. At one time the government was concerned only with revenue and the public mainly with surface rights to good land for farms. Later it became important first to develop, then to conserve the natural resources of the land in timber, minerals, oil, and water. Nowadays the land as living space and play space has taken on new values. Our more mobile population, in which those who are East today are West tomorrow, tends to erase sectional attitudes once important.

Bibliography

(With a Supplement for Chapter XXIII)

Still useful for a study of land policies though they have been in print for more than a generation are the three bibliographies prepared by members of the staff of the U.S. Department of Agriculture: Everett E. Edwards, *A Bibliography of the History of Agriculture in the United States* (Washington, 1930); Louise O. Bercaw, A. M. Hannay, and Esther M. Colvin, *Bibliography on Land Settlement with Particular Reference to Small Holdings and Subsistence Homesteads* (Washington, 1934); and Bercaw and Hannay, *Bibliography on Land Utilization, 1918-1936,* (Washington, 1938).

Government Documents, Manuscript and Published

Original manuscript records of the public lands have constituted the principal sources of this study. My first introduction to them was in the summer of 1927 when I used the "Abstracts of Entries" of cash, warrant, and scrip entries kept by the registers and the "Register of Receipts" kept by the receivers of the eight land offices of Illinois which were then in the auditor's office in Springfield but now are in the State Archives. Separate volumes were maintained for entries with Revolutionary War Scrip, War of 1812 warrants, military bounty land warrants of the acts of 1847, 1850, 1852, and 1855 and of each of the numerous special scrip acts for each land office. From these abstracts and registers it was possible to compile data showing the entries of those who were speculating in public lands. Originals of all the abstracts and registers of the many land offices in the various states are now in the National Archives or where still current in the Bureau of Land Management. Duplicates maintained by the local offices, where noncurrent, have been deposited with the individual states.

The abstracts of sales and entries with warrants and scrip are particularly meaningful, for the entries, no matter what the size, were out in the open, subject to public inspection. There was nothing hidden about them. They were not the result of fraud, though favoritism and special influence might enable some to gain rights to land that others hoped to win. On the other hand, the declaratory statements of persons filing for a preemption, the original entries of homesteaders and of those entering land under the Timber Culture Act, the Desert Land Act, and the Timber and Stone Act might be made for persons ineligible to file them directly and are not, therefore, a very good index of early ownership. To determine the individuals for whom such entries were made one must go to the county conveyances.

The Tract Books, of which duplicate sets were maintained in Washington and in the local offices, record all the entries whether carried to title or cancelled for each section, each quarter-section and quarter-quarter, and mineral claims of even fewer acres were entered. The Tract Books and the Abstracts of Entries constitute the great Domesday Survey of the Public Domain showing the transfer of lands

from the United States to the first owner. Some historians have long thought that funds for publication of source material might well be used to reproduce some of the tract book entries.

The correspondence of the Commissioner of the General Land Office and of the Secretary of the Treasury (before 1849) was found most helpful. The incoming and copies of the outgoing correspondence in the different series is enormous and I can claim only to have used a small portion. The most intensive use of the early correspondence has been made by Malcolm Rohrbough in *The Settlement and Administration of American Public Lands, 1789-1837,* which is listed elsewhere in this bibliography.

The Bureau of Land Management published in 1959 a small but admirably illustrated brochure entitled *The Public Land Records . . . Footnotes to American History* in which is described the reproduction work done to preserve and make more manageable the Tract Books and other records which have been used almost to the point of destruction. Harry Yoshpe and Philip Brower in *Preliminary Inventory of the Land-Entry Papers of The General Land Office* provide a most needed introduction to the land records in the National Archives, Robert W. Harrison has described the scope and extent of the materials in "Public Land Records of the Federal Government," *Mississippi Valley Historical Review,* 41 (September, 1954), 277-288, and Richard S. Maxwell has shown possibilities for research in the records and what some scholars have already done in "The Public Land Records of the Federal Government, 1800-1950, and their Statistical Significance," prepared for the Conference on the National Archives and Statistical Research, 1968.

The Serial Documents of the United States Congress contain the Annual Reports of the Commissioner of the General Land Office and a great variety of other reports called for by resolutions of either House. The early documents are assembled and reprinted in the *American State Papers, Public Lands,* 8 vols., and in *Finance,* 5 vols., Gales & Seaton edition in both instances. The Annual Reports of the Commissioner were published with the Annual Report of the Secretary of the Interior after 1849, were summarized by the Secretary, and from 1866 until 1932 were also published separately. Reports subsequent to 1904 are less detailed than those of earlier years. *Decisions of the Department of the Interior and General Land Office in Cases Relating to the Public Lands, 1881-1967,* 73 vols., contains detail partly included in the Annual Reports of the General Land Office and for the years in which they overlap are analyzed in the various publications of Henry N. Copp, particularly in *Copp's Land Owner, 1874-1891,* 18 vols.

The Hearings of Senate and House Committees having responsibility for bills affecting public land administration become increasingly important in the 20th century. They provide much detailed information concerning the successes and failures of government policies and the political reactions thereto. It has not seemed necessary to list them in the bibliography as they are given full titles in the footnotes.

The Reports of the Public Land Commissions of 1879, 1904, and 1930—especially the first two—offer penetrating insights into the functioning of the land system as does the report of the Bureau of Corporations, *The Lumber Industry,* 4 parts (Washington, 1913-14).

In trying to find the objectives, the goals, and the purpose for which Congress enacted the various land laws, it has been necessary to examine the *Journal of the Continental Congress, 1784-1789,* the *Annals of Congress, 1789-1824,* the *Register of Debates in Congress, 1825-1837,* the *Con-*

gressional Globe, 1833-1873, and the *Congressional Record, 1873-*___. References to statutes have been made to the *Statutes at Large.* The *Census Reports* have been constantly at hand. Most essential for any study of the management and disposal of the public lands as part of the economic development of the United States is the great collection of data brought together in *Historical Statistics of the United States. Colonial Times to 1957* (Washington, 1960).

Students of the history of the West and public land states find indispensable the *Territorial Papers of the United States,* edited by Clarence Edwin Carter. The 26 magnificent volumes in print bring the record down through Florida and the volumes on Iowa and Wisconsin are well under way.

I have made use of many newspapers in my previous studies and have carried over some of the citations to this work. For the period of Horace Greeley's connection with the *New York Tribune* that paper is indispensable for an understanding of public land problems. The index of the *New York Times* makes that paper most useful for the later years.

The role of the public land states in administering the land granted them is second only to that of the Federal government in the history of public lands. I have used the manuscript records of Illinois, Wisconsin, Arkansas, Louisiana, Alabama, and California. Early published reports of state land administering agencies are brief and not particularly illuminating; in the late 19th and 20th centuries the reports are more useful.

In the preparation of a number of specialized studies of the operation of public land policies in Illinois, Wisconsin, Indiana, Iowa, Kansas, Louisiana, Alabama, Mississippi, and California I made use of numerous manuscript collections in institutional hands and worked through the early deed, mortgage, and probate records of 75 counties, somewhat to the mystification of local abstractors and county officials. Some of the results of this work have been summarized in this study and reference has been made to these earlier studies. To list all of them here and also in footnotes would take too much space.

Periodicals

A number of trade journals and a house organ were used fairly intensively for periods when their sponsors were intensely concerned about legislation under consideration or existing land policies. The most important of these were the *American Cattle Producer,* Denver, 1919-___; *American Forests,* various names, Washington, 1895-___; *Lumber Trade Journal,* Chicago, 1882-1931; *National Wool Grower, Salt Lake City,* 1911-___; *Northwestern Lumberman,* Chicago, 1873-1898; *Reclamation Era,* Washington, 1908-___.

Unpublished Doctoral Dissertations, Master's Theses, and Manuscript Studies

Too much cannot be said of the high quality of some of the studies here listed. They are well worthy of publication. A number of dissertations brought to my attention too late for use have been listed because they obviously belong here.

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Appendix A

Homesteads, Preemptions, and Commutations

As long as settlement and land entries were centered in areas where the public lands had been offered and were therefore open to unlimited acquisition with cash, scrip, or warrants, there was little incentive to resort to preemption or to use the commutation clause of the Homestead Act to gain quick titles. After 1880, however, when the offered land that was at all attractive had passed into private hands and no substantial additional offerings were being made, frequent use was made of the Preemption Law and the commutation clause of the Homestead Law. Indeed, from 1883 to 1889 the number of persons acquiring title by preemption and commutation far exceeded the number gaining title by completing their 5 years of residence. This was the period when the Preemption Law was most grossly abused by livestock men, lumbermen, and speculators who were also abusing the commutation privilege. In 1891 land reformers in Congress succeeded in cutting off one route to quick ownership by repealing preemption and made the second route less useful by extending the required period of presumed occupation of homesteads before they could be commuted to cash entries from 6 months to 14. Though the number of preemptions sharply declined, thereafter, more than 15,000 were filed after repeal by persons who had established rights before 1891. Commutations likewise declined reaching a low point in 1897 when only 1,301 homesteads were commuted while 18,814 went to final entry after 5 years of occupation.

FINAL HOMESTEAD ENTRIES BY STATES, 1868–1961[a]

State	Number	Acres
Alabama	41,819	4,578,323
Alaska	3,277	363,775
Arizona	20,268	4,134,356
Arkansas	74,620	8,133,791
California	66,738	10,476,665
Colorado	107,618	22,146,400
Dakota Territory	33,951	5,244,345
Florida	28,096	3,326,712
Idaho	60,221	9,733,455
Illinois	74	5,667
Indiana	30	1,785
Iowa	8,851	903,164
Kansas	89,945	13,089,258
Louisiana	22,988	2,561,334
Michigan	19,861	2,321,937
Minnesota	85,072	10,389,606
Mississippi	24,126	2,637,412
Missouri	34,633	3,644,306
Montana	151,600	32,050,480
Nebraska	104,260	22,253,314
Nevada	4,370	704,167
New Mexico	87,312	19,422,958
North Dakota	118,472	17,417,466
Ohio	108	7,707
Oklahoma	99,557	14,865,912
Oregon	62,926	10,513,945
South Dakota	97,197	15,660,250
Utah	16,798	3,607,683
Washington	58,156	8,465,002
Wisconsin	29,246	3,110,990
Wyoming	67,315	18,225,327
General Land Office	2,602	219,352
Total	1,622,107	270,216,874
	Average	166 acres

[a] Taken from *Homesteads* issued by the Bureau of Land Management in 1962. The larger part of the entries in Dakota Territory before 1889 were in what later became South Dakota.

The movement of settlers into the dryer portions of the Great Plains and the Interior Basin, which was accompanied by a large proportion of failures, led many farm makers to sell their claims to cattlemen and brought about a revival of the practice of commuting homestead entries. The high point in this second period was reached in 1908 when 23,059 settlers commuted their entries. Between 1901 and 1913 a total of 178,592 homesteads of the 160-acre variety were commuted. Commutation was denied to those seeking land under the Kinkaid Act, the Enlarged Homestead Act, and the Forest Homestead Act. By the adoption of the 3-year Homestead Law of June 6, 1912, Congress shortened the period of residence and cultivation by 2 years and allowed the settler to be absent from his claim for 5 months in each of the 3 years, thereby removing most of the reasons for commutation. Thereafter the number of commutations sharply declined.

By no means all the hundreds of thousands of tracts which went to title under the preemption laws and the commutation clause after 1881 were the result of schemes to gain a quick title to resell to cattlemen, lumbermen, and speculators. As the text shows, many legitimate settlers found it either necessary or economically desirable to borrow the $200 to pay for their improved claims so that they could mortgage their farms for $500 to $1,000 or more to enlarge and make more efficient their operations. Others needed to salvage something from their blasted hopes in struggling to make a living on land not fit for farming.

The abuse of preemption and commutation and the useful feature of the latter privilege are of much importance but the paramount factor on which attention should be focused is the number of homesteaders who proved up and gained title in the regular way, completing their 5 or 3 years of residence and making the prescribed improvements. Their number far exceed those who preempted or who commuted.

That 1,322,107 homesteaders carried their entries to final patent after 3 or 5 years of residence is overwhelming evidence that, despite the poorly framed legislation with its invitation to fraud, the Homestead Law was the successful route to farm ownership of the great majority of settlers moving into the newer areas of the West after 1862.

Homestead and Preemption Entries[a]

Year	Original		Final		Commutations[b]		Preemptions	
	Number	Acres	Number	Acres	Number	Acres	Number	Acres
1863	8,223	1,032,871						
1864	9,505	1,247,170						
1865	8,924	1,141,443						
1866	15,355	1,890,847						
1867	16,957	1,834,512						
1868	23,746	2,332,151	2,772	355,086				
1869	25,628	2,698,481	3,965	504,301				
1870	33,972	3,754,203	4,041	519,728				
1871	39,768	4,657,355	5,087	629,162				
1872	38,742	4,595,435	5,917	707,409				
1873	31,561	3,760,199	10,311	1,224,891				
1874	29,126	3,489,570	14,129	1,585,782				
1875	20,668	2,369,782	18,293	2,068,538				
1876	25,104	2,867,813	22,530	2,590,553				
1877	18,675	2,176,257	19,900	2,407,828				
1878	35,630	4,496,854	22,460	2,662,981				
1879	41,005	5,267,384	17,391	2,070,842				
1880	47,293	6,054,708	15,441	1,938,235				
1881	36,999	5,028,100	15,077	1,928,005	858	177,329	5,050	721,146
1882	45,331	6,348,045	17,174	2,219,454	7,438	1,077,383	9,255	1,351,380
1883	56,565	8,171,914	18,988	2,504,414	8,411	1,286,119	15,221	2,285,710
1884	55,045	7,831,509	21,843	2,945,575	9,623	1,426,188	21,286	3,206,095
1885	50,877	7,415,885	22,066	3,032,679	7,633	1,127,444	15,800	2,311,296
1886	61,638	9,145,135	19,356	2,663,532	4,866	720,415	15,712	2,279,218
1887	52,028	7,594,350	19,866	2,749,037	10,201	1,578,707	21,403	3,172,411
1888	46,236	6,676,615	22,413	3,175,401	14,057	2,137,988	23,151	3,463,306
1889	42,183	6,029,230	25,549	3,681,709	10,030	1,521,537	19,586	2,902,028
1890	40,244	5,531,678	28,080	4,060,593	6,065	905,536	15,243	2,204,905
1891	37,602	5,040,393	27,666	3,954,588	3,916	546,302	9,803	1,391,413
1892	55,113	7,716,062	22,822	3,259,897	2,914	383,699	6,603	913,782
1893	48,436	6,808,791	24,204	3,477,232	3,175	425,665	4,824	718,336
1894	56,632	8,046,967	20,544	2,929,647	2,379	319,308	1,332	195,578
1895	37,336	5,009,491	20,922	2,980,809	2,306	312,538	416	57,880
1896	36,548	4,830,915	20,099	2,790,243	1,875	242,305	345	47,170
1897	33,250	4,452,289	20,115	2,778,404	1,301	162,355	138	18,547
1898	44,980	6,206,557	22,281	3,095,018	2,331	313,205	112	15,399
1899	45,776	6,177,587	22,812	3,134,149	3,083	424,293	114	15,294
1900	61,270	8,478,409	25,278	3,477,687	3,953	543,944	120	16,359

HOMESTEAD AND PREEMPTION ENTRIES[a] (*Cont.*)

Year	Original		Final		Commutations[b]		Preemptions	
	Number	Acres	Number	Acres	Number	Acres	Number	Acres
1901	68,648	9,497,275	37,544	5,240,780	5,115	709,855	81	12,065
1902	98,829	14,033,245	31,618	4,342,486	7,989	1,105,850	66	9,270
1903	80,188	11,193,120	26,343	3,575,761	15,198	2,194,743	104	14,200
1904	69,175	10,171,265	23,912	3,232,293	15,092	2,142,185	72	9,675
1905	70,344	12,895,571	34,765	4,835,488	10,144	1,416,100	46	5,619
1906	89,600	13,974,931	35,309	4,984,543	9,765	1,367,793	19	2,005
1907	93,957	14,754,584	40,545	5,769,783	13,343	1,926,526	20	2,701
1908	87,057	13,586,348	52,695	7,366,988	23,059	3,124,277	89	10,877
1909	75,445	12,302,146	46,767	6,763,682	21,257	3,064,215	74	8,315
1910	98,598	18,329,115	42,504	6,703,081	17,092	2,559,123	429	34,727
1911	70,720	15,189,087	44,456	7,385,019	17,679	2,635,969	24	1,706
1912	52,991	11,246,298	41,064	6,767,940	16,738	2,461,871	31	2,543
1913	57,800	11,222,053	59,363	10,884,822	6,111	875,536	22	3,063
1914	21,229	12,117,087	53,308	9,941,317	4,584	650,196	63	8,363
1915	62,360	12,439,774	40,037	7,560,805	2,694	379,923	7	740
1916	65,262	13,628,107	39,703	7,508,691	1,745	230,409	4	394
1917	58,896	12,020,527	45,222	6,683,248	1,494	185,818	6	221
1918	35,875	7,419,628	42,512	8,380,852	1,193	144,414	1	40
1919	39,341	10,203,965	33,464	6,615,818	841	91,057	2	86
1920	48,532	13,501,100	40,581	8,459,241				
1921	43,813	13,661,635	34,490	7,795,158				
1922	29,263	8,979,792	31,363	7,357,102				
1923	18,942	5,524,159	22,683	5,621,311				
1924	14,506	3,984,155	18,266	4,811,311				
1925	11,658	3,188,686	14,884	4,067,769				
1926	10,790	3,001,403	12,404	3,466,363				
1927	10,500	3,236,764	9,560	2,608,071	245	24,444		
1928	10,429	3,366,185	6,811	1,828,258	144	12,708		
1929	11,598	4,178,495	6,367	1,711,993				
1930	13,248	4,920,842	5,068	1,380,542				
1931	13,099	4,924,046	4,932	1,360,221				
1932	11,010	4,049,854	4,130	1,214,519	53	4,625		
1933	7,769	2,714,029	3,087	908,329				
1934	7,741	2,862,142	3,627	1,125,394				
1935	3,458	1,193,312	4,925	1,642,134				
1936	1,313	383,656	5,221	1,766,700				
1937	609	121,777	5,441	1,916,823				
1938	464	81,920	3,952					

HOMESTEAD AND PREEMPTION ENTRIES[a] (*Cont.*)

Year	Original		Final		Commutations[b]		Preemptions	
	Number	Acres	Number	Acres	Number	Acres	Number	Acres
1939	410	70,925	3,081	1,089,936				
1940	383	50,141	1,815	654,015				
1941	425	53,440	1,187	389,970	30	2,230		
1942	285	37,435	821	202,666	18	1,324		
1943	213	29,299	499	114,481	18	1,440		
1944	158	19,868	418	53,719	17	1,319		
1945	185	22,694	249	37,398	11	1,064		
1946	144	18,260	254	33,506	4	240		
1947	475	55,092	243	30,200	26	2,121		
1948	689	85,734	168	20,576	6	481		
1949	684	82,712	335	41,541	16	2,112		
1950	571	79,840	418	49,392	14	1,567		
1951	415	56,209	660	70,830	26	2,873		
1952	460	59,070	357	41,965	20	2,092		
1953	483	61,536	353	44,497	13	1,172		
1954	474	60,127	370	46,056	8	642		
1955	482	43,569	340	39,458	15	1,783		
1956	455	57,315	330	42,903				
1957	662	79,452	422	65,753	18	2,170		
1958	524	69,641	306	43,147	40	4,289		
1959	1,181	146,766	342	41,506				
1960	1,077	147,916	376	45,097				
1961	612	76,875	438	57,461				
1962	661	80,452	173	23,138	213	27,101		
1963	383	46,139	199	24,659	245	31,680		
1964	291	31,441	515	63,423	344	42,081		
1965	182	22,173	262	30,289	159	18,299		
1966	115	15,514	249	33,526	142	20,769		
1967	51	7,442	196	23,405	12	1,518		
Totals	2,992,058	510,748,328	1,623,691	270,415,324			186,674	27,413,863

[a] Preemption entries and commuted homesteads are not available in the *Annual Reports* for the years before 1881, nor have I been able to fill in the commuted entries for the years after 1919 save for scattered years and for 1941–1967. Most of the later commuted entries are for homesteads on Indian lands.

[b] An official of the Department of the Interior told the author that commuted homesteads are included in the final entries in the columns above, though in some of the earlier years this is not clear. Homesteads on ceded Indian lands are not included. In *Public Land Statistics, 1967*, p. 6, the total acreage "granted or sold to homesteaders" i.e. final entries including commutations and homesteads on ceded Indian lands, is 287,300,000. Jerry A. O'Callaghan, Bureau of Land Management, Department of the Interior, to the author, January 8, 1965.

Appendix B

Public Offerings or Proclamations of Sales and Entries of Land

Once public land had been surveyed and the plats, survey notes, tract books, and entry volumes and all other necessary forms placed in a land office presided over by a register and a receiver the land was proclaimed for sale by public announcement. Before the sale settlers and representatives of investors or speculators would roam over the land, make their selections and the settlers would establish their claims and register them with the *claim club*. After the auction was held the remaining unsold lands were classed as "offered" and were open to private entry at $1.25 an acre, or they could be entered with any of the various forms of scrip or military bounty land warrants in any amount desired. There was no legal limit on the amount of land individuals could buy at the auction or at private entry thereafter.

EXPERIENCE UNDER PUBLIC SALE LAWS
1822–1894

Year	Acreage Offered[a]	Acreage Sold	Entries With Military Land Warrants	Scrip Entries
1822	78,723,174	15,615,489	----------	----------
1823	11,414,598	653,319	----------	----------
1824	7,294,186	749,323	----------	----------
1825	3,419,604	893,461	----------	----------
1826	2,880,703	848,082	----------	----------
1827	3,314,816	926,727	----------	----------
1828	3,268,493	965,600	----------	----------
1829	6,148,962	1,244,860	----------	----------
1830	6,750,798	1,929,733	----------	----------
1831	11,005,561	2,777,856	----------	----------
1832	4,205,805	2,462,342	----------	----------
1833	6,614,596	3,856,227	----------	----------
1834	13,056,865	4,658,218	----------	----------
1835	13,767,268	12,564,478	----------	----------
1836	509,034	20,074,870	----------	----------
1837 (to Sept.)	----------	4,805,566	----------	----------
1838	20,984,444	3,414,907	----------	----------
1839	12,170,411	4,976,383	----------	----------
1840	13,531,798	2,236,890	----------	----------
1841	3,303,558	1,164,786	----------	----------
1842	10,925,550	1,129,218	----------	----------
1843	5,124,367	1,605,264	----------	----------
1844	9,245,763	1,754,763	----------	----------
1845	5,557,584	1,845,527	----------	----------
1846	12,535,878	2,263,731	----------	----------
1847	9,138,531	2,521,306	239,880	55,903

EXPERIENCE UNDER PUBLIC SALES LAWS—Continued
1822–1894

Year	Acreage Offered[a]	Acreage Sold	Entries With Military Land Warrants	Scrip Entries
1848	9,459,741	1,887,553	2,288,960	57,249
1849	6,131,990	1,329,903	3,405,520	53,935
1850	6,411,156	1,405,839	2,167,680	----------
1851	7,731,537	1,846,847	2,454,000	----------
1852	8,032,463	1,553,071	3,201,314	115,682
1853	10,715,098	1,083,495	6,142,360	21,309
1854	8,189,017	7,035,735	3,402,520	299,434
1855	1,178,003	15,729,524	1,345,580	240,594
1856	----------	9,227,878	8,382,480	72,067
1857	1,328,156	4,142,744	6,283,920	----------
1858	11,109,120	3,804,908	5,802,150	----------
1859	15,242,815	3,961,581	2,914,700	----------
1860	9,257,217	3,461,204	2,782,780	----------
1861	3,685,287	1,465,604	2,017,440	----------
1862	5,156,963	144,850	611,827	----------
1863	3,287,817	91,354	464,682	----------
1864	3,696,892	432,774	515,900	214,418
1865	----------	557,213	348,660	460,130
1866	6,423,984	388,294	403,180	651,066
1867	310,000	756,620	476,760	2,130,493
1868	3,131,400	914,941	512,533	1,653,309
1869	3,430,000	2,899,544	449,780	376,924
1870	3,568,240	2,159,516	512,360	209,675
1871	750,320	1,389,982	525,920	510,960
1872	----------	1,370,320	389,460	699,373
1873	308,000	1,626,266	214,940	667,668
1874	----------	1,041,345	133,160	125,325
1875	----------	745,061	137,000	22,140
1876	----------	640,692	137,640	23,369
1877	----------	740,686	97,480	9,358
1878	----------	877,555	84,720	94,684
1879	----------	622,573	50,820	93,190
1880	----------	850,741	88,522	207,703
1881	----------	1,587,617	55,662	32,342
1882	----------	3,611,530	43,866	13,940
1883	3,000,000	----------	45,414	16,598
1884	1,500,000	----------	26,586	9,959
1885	----------		26,833	10,143
1886	----------		28,016	2,191
1887	----------		18,775	3,280
1888	----------		18,985	26,342
1889	----------		19,483	17,373
1890	----------		19,034	10,710
1891	----------		21,686	10,225
1892	----------		13,254	34,771
1893	----------		5,086	8,742
1894	----------		5,762	2,194

[a] Acreage offered, but includes acreage subsequently postponed or cancelled.

Appendix C

Federal Grants to Public Land States

PURPOSES OF FEDERAL GRANTS TO STATES

Year of Admission	State	Schools		Salt Springs Acres	Public Buildings Acres	Seminaries (university) Acres	A & M Colleges Acres
		Section(s)	Acres				
1803	Ohio	16	724,266	24,216	----------	69,120	630,000 (scrip)
1812	Louisiana	16	807,271	----------	----------	46,080	210,000 (scrip)
1816	Indiana	16	668,578	23,040	----------	46,080	390,000 (scrip)
1817	Mississippi	16	824,213	----------	1,253	69,120	210,000 (scrip)
1818	Illinois	16	996,320	121,029	2,560	46,080	480,000 (scrip)
1819	Alabama	16	911,627	23,040	1,620	92,160	240,000 (scrip)
1821	Missouri	16	1,221,813	46,080	2,560	46,080	330,000 ------
1836	Arkansas	16	933,778	46,080	10,600	46,080	150,000 (scrip)
1837	Michigan	16	1,021,867	46,080	3,200	46,080	240,000 ------
1845	Florida	16	975,307	----------	5,120	92,160	90,000 (scrip)
1846	Iowa	16	1,000,679	46,080	3,200	46,080	240,000 ------
1848	Wisconsin	16	982,329	----------	6,400	92,160	240,000 ------
1850	California	16, 36	5,534,293	----------	6,400	46,080	150,000 ------
1858	Minnesota	16, 36	2,874,951	46,080	6,400	92,160	120,000 ------
1859	Oregon	16, 36	3,399,360	46,080	6,400	46,080	90,000 ------
1861	Kansas	16, 36	2,907,520	46,080	6,400	46,080	97,682 ------
1864	Nevada	16, 36	2,061,967[a]	----------	12,800	46,080	90,000 ------
1867	Nebraska	16, 36	2,730,951	46,080	12,800	46,080	90,000 ------
1876	Colorado	16, 36	3,685,618	46,080	32,000	46,080	91,600 ------
1889	North Dakota	16, 36	2,495,396	----------	82,000	86,080	130,000 ------
1889	South Dakota	16, 36	2,733,084	----------	82,000	86,080	160,000 ------
1889	Montana	16, 36	5,198,258	----------	182,000	46,080	140,000 ------
1889	Washington	16, 36	2,376,391	----------	132,000	46,080	90,000 ------
1890	Idaho	16, 36	2,963,698	----------	32,000	96,080	90,000 ------
1890	Wyoming	16, 36	3,472,872	----------	107,000	46,080	90,000 ------
1896	Utah	2, 16, 32, 36	5,844,196	----------	64,000	156,080	200,000 ------
1907	Oklahoma	16, 36[b]	2,044,000	----------	1,760	250,000	350,000 ------
1912	New Mexico	2, 16, 32, 36	8,711,324	----------	132,000	312,702	250,000 ------
1912	Arizona	2, 16, 32, 36	8,093,156	----------	100,000	246,000	150,000 ------
1960	Alaska	----------					

PURPOSES OF FEDERAL GRANTS TO STATES—Continued

State	Canals, River Improvements Acres	For Railroads Acres	Wagon Roads Acres	Swampland Acres	Swamp-land Indemnity Acres	Percentage of Net Proceeds	Miscellaneous Acres
Ohio	938,294		80,773	26,251		3, roads	
Louisiana	500,000	373,057		9,504,412[c]		5, roads, levees	
Indiana	1,746,224		170,580	1,254,310	4,880	3, roads	
Mississippi	500,000	1,075,345		3,287,060	56,781	3, roads, canals	
Illinois	533,368	2,595,133		1,457,614	2,309	3, schools	
Alabama	500,000	2,747,479		418,715	22,951	3, internal imp.	50,181
Missouri	500,000	1,837,968		3,346,936	85,585	3, internal imp.	
Arkansas	500,000	2,563,721		7,686,575		5, internal imp.	
Michigan	1,751,236	3,134,058	221,013	5,655,922	24,390	5, internal imp.	
Florida	500,000	2,218,705		20,211,108	115,600	5, schools	
Iowa	500,000	4,706,945		874,112	322,280	5, internal imp.	
Wisconsin	1,522,349	3,652,322	302,931	3,251,683	109,600	5, schools	
California	500,000			2,193,965		[d]	
Minnesota	500,000	8,047,469		4,706,591		5, internal imp.	28,392
Oregon	500,000		2,583,890	286,108		5, internal imp.	127,324
Kansas	500,000	4,176,329				5, internal imp.	3,021
Nevada	500,000					5, roads, ditches	12,800
Nebraska	500,000					5, schools	32,800
Colorado	500,000					5, internal imp.	32,000
North Dakota						5, schools	370,000
South Dakota						5, schools	371,440
Montana						5, schools	463,120
Washington						5, schools	400,000
Idaho						5, schools	482,187
Wyoming						5, schools	532,480
Utah						5, schools	1,150,000
Oklahoma						5, schools	450,000
New Mexico						5, schools	3,040,000
Arizona						5, schools	1,900,000
Alaska[e]						5, schools	103,350,000

[a] Nevada was permitted by an Act of 1880 to exchange its place grant of sections 16 and 36 for 2 million acres which it could select where land appeared to be most valuable.

[b] Oklahoma was given two sections in each township of public lands and sections 13 and 33 in some Indian tracts.

[c] Includes indemnity land.

[d] Not until 1906 was California given the retroactive equivalent of 5 percent of the net proceeds from the sale of public lands.

[e] Alaska was given the right to select 103,350,000 acres of public lands of which 400,000 were to be in National Forests.

Source: Various sources were relied upon in compiling this table.

AREA OF FEDERAL LANDS GRANTED TO STATES WITHIN THEIR BOUNDARIES[a]

State	Total Area of State (Land and Inland Water)	Grants to State	Percent of Total State Area
	Acres		
Ohio	26,382,080	2,758,862	10.5
Louisiana	31,054,720	11,441,032	36.8
Indiana	23,226,240	4,040,518	17.4
Mississippi	30,538,240	6,097,064	20.0
Illinois	36,096,000	6,234,655	17.3
Alabama	33,029,760	5,007,088	15.2
Missouri	44,599,040	7,417,022	16.6
Arkansas	33,986,560	11,936,834	35.1
Michigan	37,258,240	12,143,846	32.6
Florida	37,478,400	24,208,000	64.6
Iowa	36,025,600	8,061,262	22.4
Wisconsin	35,938,560	10,179,804	28.3
California	101,563,520	8,852,140	8.7
Minnesota	53,803,520	16,422,051	30.5
Oregon	62,067,840	7,032,847	11.3
Kansas	52,648,960	7,794,669	14.8
Nevada	70,745,600	2,725,666	3.9
Nebraska	49,425,280	3,458,711	7.0
Colorado	66,718,080	4,471,604	6.7
North Dakota	45,225,600	3,163,552	7.0
South Dakota	49,310,080	3,435,373	7.0
Montana	94,168,320	5,963,338	6.3
Washington	43,642,880	3,044,471	7.0
Idaho	53,476,480	4,254,448	8.0
Wyoming	62,664,960	4,345,383	6.9
Utah	54,346,240	7,507,729	13.8
Oklahoma	44,748,160	3,095,760	6.9
New Mexico	77,866,240	12,794,718	16.4
Arizona	72,901,760	10,543,931	14.5
Alaska	375,296,000	5,438,233	1.4

[a] Total area of states is taken from "Area of States and possessions, 1960," *Public Land Statistics, 1967* (Washington: Bureau of Land Management), p. 3; Grants are taken from "Grants to States, 1803–1967," pp. 7–8. *Ibid.*

The Advisory Council

Federal Liaison Members

The following are presently members of the Advisory Council by virtue of their appointment under the provision of the Commission's Organic Act providing that:

> The Chairman of the Commission shall request the head of each Federal department or independent agency which has an interest in or responsibility with respect to the retention, management, or disposition of the public lands to appoint, and the head of such department or agency shall appoint, a liaison officer who shall work closely with the Commission and its staff in matters pertaining to this Act.[1]

Department of Defense
William H. Point
Director, Real Property Management

Department of Justice
Clyde O. Martz
Assistant Attorney General

Department of the Interior
Harry R. Anderson
Assistant Secretary

Department of Agriculture
John A. Baker
Assistant Secretary

Department of Housing and Urban Development
Charles M. Haar
Assistant Secretary

Atomic Energy Commission
James T. Ramey
Commissioner

Federal Power Commission
John A. Carver, Jr.*
Commissioner

General Services Administration
Joe E. Moody
Deputy Administrator

Non-Federal Government Members

These 25 members of the Advisory Council are appointed under the provisions of the Commission's Organic Act, which states that:

> There is hereby established an Advisory Council, which shall consist of the liaison officers appointed under Section 5 of this Act, together with 25 additional members appointed by the Commission who shall be representative of the various major citizen's groups interested in problems relating to the retention, management, and disposition of the public lands, ...[2]

Roscoe E. Bell
Consultant
Center for Natural Resource Policy Study
University of Wisconsin
Madison, Wis.

John A. Biggs
Director
Department of Game
State of Washington
Olympia, Wash.

William E. Burby
Professor of Law
California Western University
San Diego, Calif.

Orlo E. Childs
President
Colorado School of Mines
Golden, Colo.

Bert L. Cole
Commissioner of Public Lands
State of Washington
Olympia, Wash.

---

[1] 78 Stat. 982, 43 U.S.C. § 1395 (1964)

* Former Under Secretary of the Interior. Acted as Liaison Member of Council representing Department of the Interior.

[2] Id. § 1396.

A. B. Curtis
Chief Fire Warden
Clearwater & Potlatch Timber Protective Associations
Orofino, Idaho

E. K. Davis
General Counsel
Sacramento Municipal Utility District
Sacramento, Calif.

Gene Etchart
Rancher
Glasgow, Mont.

Sherry R. Fisher
Chairman
Lewis & Clark Trail Commission
Vice President
Central National Bank and Trust Co.
Des Moines, Iowa

Charles H. W. Foster
Consultant
The Conservation Foundation
Washington, D.C.

W. Howard Gray
Chairman, Public Lands Committee, American Mining Congress; and practicing attorney
Reno, Nev.

C. R. Gutermuth
Vice President
Wildlife Management Institute
Washington, D.C.

Lloyd E. Haight
Vice President and General Counsel
J. R. Simplot Company
Boise, Idaho

Robert E. Lee Hall
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National Coal Association
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Denver, Colo.

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Rancher
Battle Mountain, Nev.

Bernard L. Orell
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Weyerhaeuser Company
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Bruce Renwick
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Southern California Edison Company
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Earl F. Requa
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Northern Pacific Railway Company
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Fred Smith
Businessman; Trustee,
Jackson Hole Preserve, Inc.
New York, N. Y.

H. A. True, Jr.
Chief Executive Officer
True Oil Company
Casper, Wyo.

Michael F. Widman, Jr.
Director, Research & Marketing Department
United Mine Workers of America
Washington, D.C.

Former Advisory Council Members

(Titles indicate affiliation at time of membership on Council.)

Federal Liaison Members

Victor Fischer
Assistant Administrator of the Housing and Home Finance Agency

Paul R. Ignatius
Assistant Secretary of Defense
Department of Defense

Karl S. Landstrom
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Department of the Interior

John C. Mason
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Federal Power Commission

Leonard Niederlehner
Acting General Counsel
Department of Defense

Edwin L. Weisl, Jr.
Assistant Attorney General
Department of Justice

Non-Federal Government Member

Harold G. Wilm
Associate Dean
The New York State College of Forestry at Syracuse University

Governors' Representatives

The Commission's Organic Act states that "The Chairman of the Commission shall invite the Governor of each State to designate a representative to work closely with the Commission and its staff and with the Advisory Council in matters pertaining to this Act." [3] The following are serving as representatives of the Governors of the respective States at this time:

ALABAMA
Joe W. Graham
Director
Department of Conservation
State of Alabama
Montgomery, Ala.

ALASKA
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[3] Id. § 1397.

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State of Hawaii
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IDAHO
Donald R. Theophilus
Moscow, Idaho

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INDIANA
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Department of Natural Resources
State of Indiana
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State Conservation Commission
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Commission
State of Maine
Augusta, Maine

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State of Maryland
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Commonwealth of Massachusetts
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Inter-Agency Council for Outdoor Recreation
State of Missouri
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Mons L. Teigen
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Department of State Lands and Investments
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Helena, Mont.

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Game, Forestation and Parks Commission
State of Nebraska
Lincoln, Nebr.

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State of Oklahoma
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State of Oregon
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Ingebert Fauske
Quinn, S. Dak.

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Department of Conservation
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Salt Lake City, Utah

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Conservation Work Program
Goddard College
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Attorney General
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Madison, Wis.

WYOMING
Frank C. Mockler
Practicing attorney
Lander, Wyo.

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